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## **TITLE 17**

### **CHAPTER 42**

#### **REAL ESTATE LICENSE LAW**

##### **SUBCHAPTER.**

1. REAL ESTATE LICENSE LAW - GENERAL PROVISIONS.
  2. ARKANSAS REAL ESTATE COMMISSION.
  3. LICENSES.
  4. APPLICABILITY - REAL ESTATE RECOVERY FUND - DISCIPLINARY ACTIONS.
  5. RENEWAL OF LICENSES.
  6. INTEREST ON TRUST ACCOUNTS PROGRAM.
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#### **SUBCHAPTER 1 - REAL ESTATE LICENSE LAW - GENERAL PROVISIONS**

##### **SECTION.**

- 17-42-101. Title.
  - 17-42-102. Legislative findings and intent.
  - 17-42-103. Definitions.
  - 17-42-104. Exemptions.
  - 17-42-105. Criminal sanctions.
  - 17-42-106. Injunction.
  - 17-42-107. Capacity to sue and be sued.
  - 17-42-108. Disclosure requirement.
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##### **17-42-101. Title.**

This chapter shall be known as the "Real Estate License Law."

##### **17-42-102. Legislative findings and intent.**

The legislature finds that it is necessary to regulate the practice of real estate brokers and salespersons in order to protect the public health, safety, and welfare. It is the legislature's intent that only individuals who meet and maintain minimum standards of competence and conduct may provide service to the public.

### **17-42-103. Definitions.**

As used in this chapter, unless the context otherwise requires:

(1) "Associate broker" shall mean an individual who has a broker's license and who is employed by a principal broker, or is associated with a principal broker as an independent contractor, and who participates in any activity described in subdivision (12) of this section while under the supervision of a principal broker or executive broker; provided, however, that an associate broker shall have no supervisory authority over any other licensee;

(2) "Branch office" shall mean a real estate principal broker's office other than his or her principal place of business;

(3) "Board" shall mean the State Board of Private Career Education;

(4) "Classroom hour" shall mean a period of at least fifty (50) minutes, but not more than sixty (60) minutes, of actual classroom instruction with the instructor present;

(5) "Commission" shall mean the Arkansas Real Estate Commission;

(6) "Continuing education" shall mean post licensure education derived from participation in courses in real estate-related subjects which have been approved by the board or which are not required to be approved by the board;

(7) "Continuing education unit" shall mean a period of ten (10) contact hours of actual classroom instruction with the instructor present;

(8) "Director" shall mean the Executive Director of the Arkansas Real Estate Commission;

(9) "Executive broker" shall mean an individual who has a broker's license and who is employed by a principal broker or associated with a principal broker as an independent contractor and who participates in any activity described in subdivision (12) of this section while under the supervision of a principal broker; provided, however, that an executive broker may supervise associate brokers and salespersons;

(10)(A) "Licensee" shall mean an individual who holds any type of license issued by the Commission and, unless the context clearly requires otherwise, shall include a principal broker, an executive broker, an associate broker, and a salesperson.

(B) Nothing in this chapter shall preclude a licensee from:

(i) Doing business as a professional corporation under § 4-29-101 et seq.; or

(ii) Receiving payment from a real estate firm or principal broker of an earned commission to the licensee's legal business entity if the licensee earned the commission on behalf of the real estate firm or principal broker;

(11) "Participate in a real estate auction" shall mean any act or conduct done for compensation or the expectation thereof and designed, intended, or expected to affect the bidding or results of a real estate auction, including, without limitation, serving as an auctioneer or ringman or encouraging, soliciting, or receiving bids;

(12) "Principal broker" shall mean an individual, while acting for another for a fee, commission, or other consideration, or the expectation thereof, who:

(A) Sells, exchanges, purchases, rents, or leases real estate;

(B) Offers to sell, exchange, purchase, rent, or lease real estate;

(C) Negotiates, offers, attempts, or agrees to negotiate the sale, exchange, purchase, rent, or lease of real estate;

(D) Lists, offers, attempts, or agrees to list real estate for sale, lease, or exchange;

(E) Auctions, offers, attempts, or agrees to auction real estate, or participates in a real estate auction;

(F) Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or improvements thereon;

(G) Collects, offers, attempts, or agrees to collect rent for the use of real estate;

(H) Advertises or holds himself out as being engaged in the business of buying, selling, exchanging, renting, or leasing real estate;

(I) Assists or directs in the procuring of prospects calculated to result in the sale, exchange, lease, or rent of real estate;

(J) Assists or directs in the negotiation of any transaction calculated or intended to result in the sale, exchange, lease, or rent of real estate;

(K) Engages in the business of charging an advance fee in connection with any contract whereby he or she undertakes to promote the sale or lease of real estate either through its listing in a publication issued for such purpose or for referral of information concerning such real estate to brokers, or both; or

(L) Performs any of the foregoing acts as an employee of or on behalf of the owner of, or any person who has an interest in, real estate;

(13)(A) "Real estate" shall mean and include leaseholds or any other interest or estate in land and shall include the sale and resale of time-share units.

(B) Unless the context otherwise requires, the words "real estate" and "real property" shall be synonymous; and

(14) "Salesperson" shall mean an individual who has a salesperson's license and who is employed by a principal broker or is associated with a principal broker as an independent contractor and who participates in any activity described in subdivision (12) of this section while under the supervision of a principal broker or executive broker.

#### **17-42-104. Exemptions.**

(a) The provisions of this chapter shall not apply to:

(1) Any person not licensed under this chapter who performs any of the acts described in § 17-42-103(12) with regard to the property owned, leased, or purchased by him or her;

(2) An attorney in fact under a duly executed and recorded power of attorney from the owner or lessor authorizing the final consummation by performance of any contract for the sale, lease, or exchange of real estate, provided that the attorney in fact receives no fee, commission, or other consideration and has no expectation thereof, directly or indirectly, for performing any such act;

(3) An attorney at law in the performance of his or her duties as an attorney at law;

(4) Any person acting as a receiver, trustee in bankruptcy, administrator, executor, or guardian, or while acting under a court order or under the authority of a will or of a trust instrument;

(5) Any person acting as a resident manager when the resident manager resides on the premises and is engaged in the leasing of real property in connection with his or her employment;

(6) Any person employed only at a salaried or hourly rate to engage in the leasing of real property for or on behalf of a licensed principal broker, the real estate firm of a licensed principal broker, or an owner of real estate, if the person performs one (1) or more of the following activities:

(A) Delivery of a lease application, lease, or an amendment to a lease application or lease to any person;

(B) Receiving a lease application, lease, or an amendment to a lease application for delivery to the principal broker, real estate firm, or owner;

(C) Receiving a security deposit, rental payment, or any related payment for delivery to and made payable to the principal broker, real estate firm, or owner;

(D) Acting under the direct written instructions of the principal broker, real estate firm, or owner:

(i) Showing a rental unit to any person; or

(ii) Assisting in the execution of a preprinted lease or rental agreement containing terms established by the principal broker, real estate firm, or owner; or

(E) Conveying information prepared by the principal broker, real estate firm, or owner about a lease application, lease, the status of a security deposit, or the payment of rent to or from any person;

(7) Any officer or employee of a federal agency or state government, or any political subdivision thereof, in the performance or conduct of his or her official duties;

(8) Any multiple listing service wholly owned by a nonprofit organization or association of real estate licensees; or

(9) An officer of a corporation or a general partner of a partnership with respect to real property owned or leased by the corporation or partnership, or in connection with the proposed purchase or leasing of real property by the corporation or partnership, provided that such acts are not performed by the officer or partner for or in expectation of special compensation and provided further that such acts are not performed as a vocation of the officer or partner.

(b) Any real estate broker licensed by the Arkansas Real Estate Commission on or before January 1, 1985, who is engaged in the sale of real estate by auction only is authorized to employ real estate salespersons to work under the license of the broker even though the broker is employed in a non-real estate-related field and is only a part-time broker.

#### **17-42-105. Criminal sanctions.**

(a) Any person acting as a real estate broker or salesperson within this state who does not hold a valid active Arkansas license or who otherwise violates any of the provisions of this chapter shall be guilty of a Class D felony and, upon conviction, punished accordingly.

(b) Any officer or agent of a corporation or member or agent of a firm, partnership, co-partnership, or association who shall personally participate in or in any way be accessory to any violation of this chapter by the firm, partnership, co-partnership, association, or corporation shall be subject to all the penalties prescribed in this section for individuals.

(c) Any commissioner, the executive director, or other designee, or any licensee residing in the county where the violation occurs may by affidavit institute criminal proceedings against any violator of this chapter without having to file a bond for costs.

(d) The prosecuting attorney for each county shall prosecute any violation of the provisions of this chapter which occurs in his or her county.

#### **17-42-106. Injunction.**

(a) Whenever there is reason to believe that any person, licensed or unlicensed, has violated any provision of this chapter, or any order, license, decision, demand, or requirement issued or made pursuant to this chapter, the Commission, the executive director, or other designee may bring an action in the chancery court of any county in which the person resides or does business to enjoin such person from continuing such violation or engaging therein or doing any act or acts in furtherance thereof.

(b) Whenever there is reason to believe a person is acting as a real estate broker or salesperson in this state without a valid active Arkansas license, any licensee within the county where the violation occurs may bring an action in the chancery court to enjoin such person from continuing such violation or engaging therein or doing any act or acts in furtherance thereof.

(c) In any action brought pursuant to this section, the chancery court shall have jurisdiction and authority to enter such preliminary or final injunction or such other relief as may be appropriate.

#### **17-42-107. Capacity to sue and be sued.**

(a) No action or suit shall be instituted, nor recovery be had, in any court of this state by any person or other legal entity for compensation for performance of any acts described in § 17-42-103(12) unless at the time of offering to perform and performing any such act or procuring any promise to contract for the payment of compensation for any such contemplated act:

- (1) The person holds an active license under this chapter as a principal broker; or
  - (2) The person or other legal entity was the owner of the real estate firm which contracted for or otherwise performed the acts for the compensation which is the subject of the action or suit through either a principal broker or a person approved by the Arkansas Real Estate Commission under § 17-42-301(f) while licensed or approved by the Commission at the time of the acts.
- (b) No salesperson, executive broker, or associate broker may sue in his or her own capacity for the recovery of fees, commissions, or compensation for services as a salesperson, executive broker, or associate broker unless the action is against the principal broker with whom he or she is licensed or was licensed at the time the acts were performed.
- (c)(1) As used in this subsection, “systematic residential rental property inspection program” means a program that requires all persons who reside outside of the State of Arkansas and are owners of residential rental property located within the corporate limits of a municipality in this state to designate an agent for service of process.
- (2) In any municipality that has established a systematic residential rental property inspection program, a licensee as defined under § 17-42-103 shall not have criminal or civil liability to the municipality, to the nonresident owner, or otherwise for any action or inaction of the municipality or owner:
- (A) When acting as an agent for service of process for a nonresident owner;
  - (B) Arising from the agent’s performance of duties as the agent for service of process; and
  - (C) If within three (3) business days of receipt of service of process or at other times established by ordinance in effect as of August 12, 2005, the licensee sends the service of process to the last known address of the nonresident owner.
- (3) This subsection supersedes any provision of common law to the contrary.

#### **17-42-108. Disclosure requirement.**

- (a) In every real estate transaction involving a licensee, the licensee shall clearly disclose to all parties or to their agents which party he or she is representing. A licensee may represent more than one party to a real estate transaction pursuant to and subject to regulations and rules of the Arkansas Real Estate Commission.
- (b) The timing, method, and other requirements of such disclosure shall be established by the Commission, and the Commission shall also determine the consequences of failure to make disclosure in accordance with such requirements.

## **SUBCHAPTER 2 - ARKANSAS REAL ESTATE COMMISSION**

### **SECTION.**

- 17-42-201. Creation - Members.
  - 17-42-202. Organization - Employees.
  - 17-42-203. Powers and duties.
  - 17-42-204. Disposition of funds - Fund created.
  - 17-42-205. Subpoenas and subpoenas duces tecum.
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#### **17-42-201. Creation - Members.**

(a) The Arkansas Real Estate Commission shall consist of five (5) members, appointed by the Governor for terms of three (3) years, whose terms shall begin on January 1 and end on December 31 of the third year or when their respective successors are appointed and qualified.

(1)(A) Three (3) members shall have been licensed real estate brokers or licensed real estate salespersons for not less than five (5) years prior to their nominations.

(B) The Governor shall appoint members to fill vacancies from a list of four (4) nominees submitted by the Arkansas Realtors Association.

(2)(A) Two (2) members shall not be actively engaged in or retired from the business of real estate.

(B) One (1) shall represent consumers, and one (1) shall be sixty (60) years of age or older and shall represent the elderly.

(C) Both shall be appointed from the state at large, subject to confirmation by the Senate, but shall not be required to be appointed from a list submitted by the Arkansas Realtors Association.

(D) The two (2) positions may not be held by the same person.

(E) Both shall be full voting members but shall not participate in the grading of examinations.

(b) Each commissioner may receive expense reimbursement and stipends in accordance with 25-16-901 et seq.

#### **17-42-202. Organization - Employees.**

(a)(1) Immediately upon the qualification of the member appointed in each year, the Commission shall meet and organize by selecting from its members a chairman and vice chairman.

(2) A simple majority shall constitute a quorum.

(3) The Commission shall meet as often as necessary or desirable in order to conduct its business.

(b)(1) The Commission shall employ an executive director and such staff as may be necessary to carry out the provisions of this chapter and to put into effect the rules and regulations the Commission may promulgate.

(2) The executive director shall have such duties, authority, and responsibility as the Commission may designate, or as necessarily implied herein.

(3) The Commission shall fix the salaries of employees.

#### **17-42-203. Powers and duties.**

(a) The Commission may do all things necessary and convenient for carrying into effect the provisions of this chapter and may from time to time promulgate necessary or desirable rules and regulations.

(b) The Commission shall have power to administer oaths.

(c) The Commission shall adopt a seal with such design as it may prescribe engraved thereon.

(d) Copies of all records and papers in the office of the Commission, certified and authenticated by the Commission, shall be received in evidence in all courts equally and with like effect as the originals.

(e) The commission:

(1) Shall maintain in writing or in electronic format a list of the names and addresses of all active licensees licensed by it under the provisions of this chapter; and

(2) May publish in writing or in electronic format the names of all persons who have been sanctioned under § 17-42-312 or by consent order, together with other information relative to the enforcement of the provisions of this chapter as it may deem of interest to the public.

(f) The Commission may conduct or assist in conducting real estate institutes and seminars and incur and pay the reasonable and necessary expenses in connection therewith, which institutes or seminars shall be open to all licensees.

(g) The Commission is authorized to make reasonable charges for materials provided by the Commission and for services performed in connection with providing materials.

(h)(1) The Commission is authorized to establish reasonable procedures that shall be used by real estate licensees in conducting real estate auctions.

(2) For the protection of the public, real estate licensees who manage and conduct real estate auctions shall also be required to be licensed by the Auctioneers Licensing Board.

(3) Notwithstanding subdivision (h)(2) of this section, the Commission shall have sole jurisdiction over real estate licensees and their actions when managing or conducting real estate auctions.

#### **17-42-204. Disposition of funds - Fund created.**

(a) Except as otherwise provided herein, all fees, charges, fines, and penalties collected by the Arkansas Real Estate Commission shall be deposited in a fund to be known as the "Arkansas Real Estate Commission Fund".

(b) The commission is empowered to expend funds appropriated from the Arkansas Real Estate Commission Fund for the requirements, purposes, and expenses of the commission under the provisions of this chapter.

#### **17-42-205. Subpoenas and subpoenas duces tecum.**

(a) The Arkansas Real Estate Commission shall have the power to issue subpoenas and subpoenas duces tecum in connection with both its investigations and hearings.

(b) A subpoena duces tecum may require any book, writing, document, or other paper or thing which is germane to an investigation or hearing conducted by the Commission to be transmitted to the Commission.

(c)(1) Service of a subpoena shall be as provided by law for the service of subpoenas in civil cases in the circuit courts of this state, and the fees and mileage of officers serving the subpoenas and of witnesses appearing in answer to the subpoenas shall be the same as provided by law for proceedings in civil cases in the circuit courts of this state.

(2)(A) The Commission shall issue a subpoena or subpoena duces tecum upon the request of any party to a hearing before the Commission.

(B) The fees and mileage of the officers serving the subpoena and of the witness shall be paid by the party at whose request a witness is subpoenaed.

(d)(1) In the event a person shall have been served with a subpoena or subpoena duces tecum as herein provided and fails to comply therewith, the Commission may apply to the circuit court of the county in which the Commission is conducting its investigation or hearing for an order causing the arrest of the person and directing that the person be brought before the court.

(2) The court shall have the power to punish the disobedient person for contempt as provided by law in the trial of civil cases in the circuit courts of this state.

### **SUBCHAPTER 3 - LICENSES**

#### **SECTION.**

- 17-42-301. License required - Violations.
  - 17-42-302. Issuance or denial of license.
  - 17-42-303. Education and experience requirements.
  - 17-42-304. Fees.
  - 17-42-305. Nonresident license requirements.
  - 17-42-306. Application procedure.
  - 17-42-307. Expiration and renewal.
  - 17-42-308. Inactive license.
  - 17-42-309. Place of business.
  - 17-42-310. Change of name or address - Lost license or card.
  - 17-42-311. Violations.
  - 17-42-312. Investigation of complaint - Penalties.
  - 17-42-313. Dismissal of complaint - Appeal.
  - 17-42-314. Hearings.
  - 17-42-315. Criminal background check
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#### **17-42-301. License required - Violations.**

(a) No person shall practice or represent himself or herself as a real estate broker or salesperson without first applying for and receiving a license to practice under this chapter.

(b) Any person who directly or indirectly for another with the intention, or on the promise of receiving any valuable consideration, offers, attempts, or agrees to perform any single act described in § 17-42-103(12), whether as part of a transaction or as an entire transaction, shall be deemed a broker or salesperson within the meaning of this chapter.

(c) The commission of a single act by a person required to be licensed under this chapter and not so licensed shall constitute a violation of this chapter.

(d) It shall be unlawful for any person, directly or indirectly, to act as a real estate broker or salesperson without first obtaining a license and otherwise complying with the provisions of this chapter.

(e) Notwithstanding the provisions of this section, a person or other legal entity not licensed by the Commission may own a real estate firm, provided the employees or agents employed by or associated with the firm who perform real estate activities identified under § 17-42-103(12) hold an active license under this chapter. The firm may enter into contracts or otherwise perform activities identified under § 17-42-103(12) only through a principal broker and any licensee employed by or associated with the principal broker that holds an active license issued by the Commission at the time of performing the contract or activities.

(f) The Commission may provide for the continuing temporary operation of a real estate firm having all rights under § 17-42-107(a) upon the death, resignation, termination, or incapacity of the principal broker, or the closing of a real estate firm, under the direction of a person approved by the Commission, subject to time limitations and other conditions imposed by the Commission.

#### **17-42-302. Issuance or denial of license.**

- (a) The Commission shall issue a license to any applicant who meets the following requirements:
- (1) Attainment of the age of majority;
  - (2) Successful completion of educational requirements prescribed by this chapter;
  - (3) Successful completion of experience requirements prescribed by this chapter;
  - (4) Successful completion of an examination administered or approved by the Commission;
  - (5) Demonstrates no record of unprofessional conduct;
  - (6) Evidence of good reputation for honesty, trustworthiness, and integrity sufficient to safeguard the interests of the public; and
  - (7) Completion of a criminal history background check through the Department of Arkansas State Police and the Federal Bureau of Investigation as set out in § 17-42-315.
- (b) The Commission shall determine what constitutes adequate proof of meeting the requirements of subsection (a) of this section, and shall deny a license to any applicant who fails to meet such requirements or who fails to pay the appropriate fees.

#### **17-42-303. Education and experience requirements.**

- (a) The Arkansas Real Estate Commission shall establish educational requirements for licensure, including the standards and procedures for approval of educational programs, subject to the following conditions:
- (1) The maximum number of educational hours to be required of an applicant for a broker's license shall not exceed one hundred twenty (120) hours within the thirty-six (36) months immediately preceding the date of application; and
  - (2) The maximum number of hours required of an applicant for a salesperson's license shall not exceed ninety (90) hours, at least thirty (30) hours of which shall be in the basic principles of real estate.
- (b)(1) The commission shall establish the experience requirement for licensure for an applicant for a broker's license subject to the condition of serving an active, bona fide apprenticeship by holding a valid real estate salesperson's license issued by the commission or by holding a valid real estate salesperson's license or broker's license issued by the appropriate licensing agency of another state for a period of not less than twenty-four (24) months within the previous forty-eight-month period immediately preceding the date of application.
- (2) However, the commission may waive the experience requirement for a real estate broker applicant who has held an active real estate broker's license for a period of not less than eighteen (18) months or who has experience acceptable to the commission in a field considered real estate related for a period of not less than twenty-four (24) months within the previous forty-eight-month period immediately preceding the date of application.
- (c)(1) The commission shall establish a post-licensure education requirement for individuals in their first year of licensure as salespersons or brokers.
- (2) The commission shall not require more than thirty (30) classroom hours of post-licensure education hours.

#### **17-42-304. Fees.**

The Commission shall have authority to establish, charge, and collect the following fees:

- (1) An application fee not to exceed fifty dollars (\$50.00);
- (2) An original broker's license fee not to exceed eighty dollars (\$80.00);

- (3) A broker's license annual renewal fee not to exceed eighty dollars (\$80.00);
- (4) An original salesperson's license fee not to exceed sixty dollars (\$60.00);
- (5) A salesperson's license annual renewal fee not to exceed sixty dollars (\$60.00);
- (6) A broker's expired license fee not to exceed one hundred ten dollars (\$110.00) per year or fraction thereof;
- (7) A salesperson's expired license fee not to exceed eighty dollars (\$80.00) per year or fraction thereof;
- (8) A license reissuance fee not to exceed thirty dollars (\$30.00);
- (9) An initial duplicate license fee not to exceed thirty dollars (\$30.00);
- (10) A duplicate license annual renewal fee not to exceed thirty dollars (\$30.00);
- (11) A transfer fee not to exceed thirty dollars (\$30.00);
- (12)(A) An examination fee not to exceed seventy-five dollars (\$75.00).
- (B) Provided, however, the Commission, at its discretion, may direct each applicant to pay the actual costs of the examination fee directly to a testing service engaged by the Commission to administer the examination;
- (13) Pursuant to § 17-42-313, an appeal filing fee not to exceed one hundred dollars (\$100.00);
- (14) A Real Estate Recovery Fund fee not to exceed twenty-five dollars (\$25.00); and
- (15) The actual cost of a state and federal criminal history background check.

#### **17-42-305. Nonresident license requirements.**

- (a) In order to be licensed in Arkansas a nonresident must:
  - (1) Either:
    - (A) Meet the requirements of § 17-42-302; or
    - (B) Show satisfactory proof of current active licensure in the applicant's resident jurisdiction, which must be a jurisdiction that offers Arkansas licensees opportunities for licensure substantially comparable to those offered to that jurisdiction's licensees by this chapter;
  - (2) Pay any required fees;
  - (3) Sign a statement that the applicant has read the Arkansas Real Estate License Law, § 17-42-101 et seq., and regulations and agrees to abide by its provisions in all real estate activity;
  - (4)(A) Affiliate with a resident or nonresident principal broker licensed by the Commission, if a salesperson or associate broker.
    - (B) If a nonresident licensee terminates the affiliation with a principal broker licensed by the Commission, the license of such nonresident shall automatically be terminated until such nonresident places the license on inactive status or affiliates with another broker licensed by the Commission;
  - (5)(A) Cause the licensing body of the applicant's resident jurisdiction to furnish to the Commission a certification of licensure and copies of the records of any disciplinary actions taken against the applicant's license in that or other jurisdictions.
    - (B) Disciplinary action by any other lawful licensing authority may be grounds for denial of license to a nonresident or for suspension or revocation of a license issued to a nonresident or for other appropriate disciplinary action authorized by this chapter;
  - (6)(A) File with the executive director a designation in writing that appoints the executive director to act as the licensee's agent upon whom all judicial and other process or legal notices directed to such licensee may be served.
    - (B) Service upon the executive director shall be equivalent to personal service upon the licensee.
    - (C) Copies of such appointment, certified by the executive director, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the originals thereof might be admitted.

(D) In such written designation, the licensee shall agree that any lawful process against the licensee which is served upon the executive director shall be of the same legal force and validity as if served upon the licensee and that the authority shall continue in force so long as any liability remains outstanding in this jurisdiction.

(E) The executive director shall mail a copy of any such process or notice by certified mail to the last known business address of the licensee; and

(7)(A) Agree in writing to cooperate with any investigation initiated by the Commission by promptly supplying any documents the Commission may request and by personally appearing at the Commission's offices or such other location in this state as the Commission may request.

(B) If notice is sent by certified mail to the last known business address of a nonresident licensee directing the licensee to produce documents or to appear for an interview, and the licensee fails to comply with that request, the Commission may impose on the nonresident licensee any disciplinary sanction permitted by this chapter.

(b) The Commission in its discretion may enter into written agreements with similar licensing authorities of other jurisdictions as may be necessitated by the laws of those jurisdictions to assure for Arkansas licensees nonresident licensure opportunities comparable to those afforded to nonresidents by this chapter.

(c) The Commission may deny licensure under subdivision (a)(1)(B) of this section to an applicant whose resident licensure is in a jurisdiction which the Commission deems not to have educational or experience requirements at least equal to those of Arkansas.

#### **17-42-306. Application procedure.**

(a)(1) Applications for licensure must be submitted on forms provided by the Arkansas Real Estate Commission.

(2) The commission may require any information and documentation needed to determine if the applicant meets the criteria for licensure as provided in this chapter.

(3) Each applicant shall pay such application fee and examination fee as the commission may require pursuant to § 17-42-304.

(4)(A) Applicants that have provided all required information and documentation to the commission may sit for the examination, provided that a request has been sent to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check.

(B) Upon the successful completion of the license exam, no license shall be issued until the commission receives and approves the state and federal criminal background check.

(b)(1)(A) An applicant who successfully completes the examination shall pay, within ninety (90) days from the date of the examination, such license fee and Real Estate Recovery Fund fee as the commission may require pursuant to § 17-42-304.

(B)(i) If the federal criminal background check has not been received by the commission within ninety (90) days of the date of the examination, the date may be extended by the commission until receipt of the federal criminal background check.

(ii) No real estate license shall be issued until receipt and approval by the commission of the state and federal criminal background check.

(2) The applicant's failure to pay the license fee and Real Estate Recovery Fund fee within that ninety-day period shall invalidate the examination results, and the applicant shall be required to make new application and retake the examination as an original applicant.

#### **17-42-307. Expiration and renewal.**

(a) Every license, both active and inactive, shall expire on a date established by the Arkansas Real Estate Commission.

(b)(1) For each active licensee, the commission shall issue a new license for each ensuing renewal period in the absence of any reason or condition which might warrant the refusal of a license, upon receipt of a written request no later than ninety (90) days prior to the expiration of the license upon forms provided by the commission together with the renewal fee.

(2)(A) For any broker or salesperson who does not wish to engage in the real estate business, the license shall be renewed on inactive status, in the absence of any reason or condition which might warrant the refusal of a license, upon receipt of the written request of the applicant no later than ninety (90) days prior to the expiration of the license upon forms provided by the commission together with the renewal fee.

(B) However, the commission may limit the number of renewal periods in which a license may be renewed on inactive status.

(C) The renewal fee for inactive status shall be the same as for renewal of an active license.

(3) An application for renewal filed after the date established by the commission to renew a license shall be treated as an application to renew an expired license.

(c) If any person to whom a valid license may have been issued permits the license to expire for a period not in excess of that established by the commission, the commission shall issue to the person a current license without requiring the person to submit to any examination if the person furnishes such information as the commission requires, including proof of completion of appropriate continuing education requirements, and pays such fee as the commission requires.

(d)(1) New salesperson and broker licensees shall complete post-licensure education in accordance with § 17-42-303(c).

(2) If the licensee fails to complete the post-licensure education requirements within twelve (12) months after the date the license was issued, the commission shall place the license on inactive status until the commission receives documentation that the licensee has completed the post-licensure education requirements.

#### **17-42-308. Inactive license.**

(a)(1) A licensee may place his or her license on inactive status.

(2) The holder of an inactive license shall not practice as a real estate broker or salesperson in this state without first activating the license.

(b) An inactive license which is not renewed shall be treated as an expired license pursuant to § 17-42-307.

(c) Inactive licenses may be activated upon compliance with requirements established by the Commission, including payment of appropriate fees.

(d) The provisions of this chapter relating to disciplinary action against a licensee shall be applicable to an inactive or expired license.

#### **17-42-309. Place of business.**

(a) Every principal broker shall maintain a place of business and shall display a permanently attached sign bearing the name under which the broker conducts his or her real estate business and the words "real estate," "realty," or other words approved by the Commission which clearly indicate to the public that the broker is engaged in the real estate business.

(b)(1) If a principal broker maintains a branch office, a duplicate license shall be issued upon payment by the principal broker of such initial fee and, thereafter, such renewal fee as the Commission may require pursuant to § 17-42-304.

(2) Provided, however, a duplicate license shall not be issued for a branch office at which licensees are assigned unless the principal broker establishing the branch office has designated an executive broker to supervise the licensees.

#### **17-42-310. Change of name or address - Lost license or card.**

(a)(1) When a licensee changes his or her name, place of business, or address shown on the license, or loses a license or pocket card, he or she shall promptly notify the Commission of such change or loss.

(2) Upon receipt of such notice and payment of the relevant fee, the Commission shall reissue the license.

(b) It is the responsibility of each licensee to keep the Commission notified of his or her mailing address, both home and business, at all times.

(c) The licenses of the principal broker and all licensees employed by or associated with him or her shall be retained by the principal broker and conspicuously displayed in his or her place of business.

(d)(1) Upon the termination of a licensee's employment by or association with a principal broker, the licensee shall promptly deliver his or her pocket card to the principal broker, and the principal broker shall promptly notify the Commission of such termination and return to the Commission the license and pocket card of the terminated licensee, which shall automatically inactivate the license.

(2) If the pocket card is unavailable, the principal broker shall promptly so notify the Commission in writing.

(e) A license inactivated under this section may be transferred to another principal broker upon application of the licensee, payment of the relevant fee, and submission of a statement that he or she is not taking any listings, management contracts, appraisals, lease agreements, or copies of any such documents, or any other pertinent information belonging to the licensee's previous principal broker or firm.

#### **17-42-311. Violations.**

(a) The following acts, conduct, or practices are prohibited, and any licensee found guilty shall be subject to disciplinary action as provided in § 17-42-312:

(1) Obtaining a license by means of fraud, misrepresentation, or concealment;

(2) Violating any of the provisions of this chapter or any rules or regulations adopted pursuant thereto or any order issued thereunder;

(3) Being convicted of or pleading guilty or nolo contendere to a felony or crime involving moral turpitude, fraud, dishonesty, untruthfulness, or untrustworthiness regardless of whether the imposition of sentence has been deferred or suspended;

(4) Making any substantial misrepresentation;

(5) Making, printing, publishing, distributing, or causing, authorizing, or knowingly permitting the making, printing, publication, or distribution of false statements, descriptions, or promises of such character as to reasonably induce, persuade, or influence any person to act thereon;

(6) Failing, within a reasonable time, to account for or to remit any moneys coming into his or her possession which belong to others;

(7) Committing any act involving moral turpitude, fraud, dishonesty, untruthfulness, or untrustworthiness;

(8) Acting for more than one (1) party in a transaction without the knowledge of all parties for whom he or she acts, or accepting a commission or valuable consideration for the performance of any of the acts



specified in this chapter from any person except the licensed principal broker under whom he or she is licensed;

(9) Acting as a broker or salesperson while not licensed with a principal broker, representing or attempting to represent a broker other than the principal broker with whom he or she is affiliated without the express knowledge and consent of such principal broker, or representing himself or herself as a salesperson or having a contractual relationship similar to that of a salesperson with anyone other than a licensed principal broker;

(10) Advertising in a false, misleading, or deceptive manner;

(11) Being unworthy or incompetent to act as a real estate broker or salesperson in such manner as to safeguard the interests of the public;

(12) Paying a commission or valuable consideration to any person for acts or services performed in violation of this chapter, including paying a commission or other valuable consideration to an unlicensed person for participation in a real estate auction; and

(13) Any other conduct, whether of the same or a different character from that hereinbefore specified, which constitutes improper, fraudulent, or dishonest dealing.

(b) Any license obtained through mistake or inadvertence shall be subject to revocation.

(c) A licensee whose license is revoked pursuant to this section shall be eligible to apply for a new license after the expiration of two (2) years from the date of revocation.

#### **17-42-312. Investigation of complaint - Penalties.**

(a)(1) The Commission may, on its own motion, and shall, upon the verified complaint in writing of any person, provided the complaint and any evidence, documentary or otherwise, presented in connection therewith shall make out a prima facie case, investigate the actions of any person engaged in the business or acting in the capacity of a real estate broker or real estate salesperson regardless of whether the transaction was for his or her own account or in his or her capacity as a broker or salesperson.

(2) If the complaint fails to state a prima facie case or if, after investigation, the executive director determines there is insufficient proof of a violation of this chapter, the executive director shall dismiss the complaint.

(3) If, however, the executive director determines there is sufficient proof of a violation of this chapter, the licensee shall be notified of the charges against him or her and ordered to appear for a hearing.

(4) If the licensee is found to have violated this chapter, the Commission may impose any one (1) or more of the following sanctions:

(A) Suspension, revocation, or denial of his or her license or the renewal thereof;

(B) A penalty not to exceed one thousand dollars (\$1,000) for each violation;

(C) Require completion of appropriate educational programs or courses;

(D) Require successful completion of an appropriate licensing examination;

(E) Place conditions or restrictions upon the licensee's license or practice; or

(F) Such other requirements or penalties as may be appropriate to the circumstances of the case, and which would achieve the desired disciplinary purposes, but which would not impair the public welfare and morals.

(b) The Commission is authorized to file suit in either the Circuit Court of Pulaski County or the circuit court of any county in which the defendant resides or does business to collect any penalty assessed pursuant to this chapter if such penalty is not paid within the time prescribed by the Commission.

(c) Where deemed appropriate, the Commission may suspend the imposition of any sanctions imposed upon appropriate terms and conditions.

### **17-42-313. Dismissal of complaint - Appeal.**

(a) Any person whose complaint against a licensed real estate broker or salesperson is dismissed by the executive director without a hearing may appeal such dismissal to the Commission subject to and in accordance with the following provisions:

(1) The request for appeal must be in writing and received in the office of the Commission not later than sixty (60) days following the date of dismissal by the executive director;

(2) The request for appeal must be accompanied by such filing fee as the Commission may require pursuant to § 17-42-304; and

(3)(A)(i) The appellant must also pay the cost of preparing the record for the Commission's review, which cost shall be determined by the Commission.

(ii) Such costs must be paid by the appellant within thirty (30) days after notification of the amount. Otherwise, the appeal will be dismissed.

(B) Provided, however, that, if the Commission's review results in a hearing being ordered on the complaint, both the filing fee and the cost of preparing the record shall be refunded to the appellant.

(C) Any person who is indigent and unable to pay either the filing fee or the cost of the record, or both, may file a pauper's oath in such form as required by the Commission, and, if the Commission determines that the appellant is indeed indigent, the filing fee or cost of the record, or both, shall be waived.

(b)(1) All appeals duly perfected pursuant to subsection (a) of this section shall be presented to and decided by the Commission on the written record.

(2) Such decision may be to affirm the executive director's dismissal, to order additional investigation, or to order a hearing on the complaint.

### **17-42-314. Hearings.**

(a) Proceedings under § 17-42-312 and hearings on denials of licenses shall be conducted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) Except in cases where a licensee has obtained a license by false or fraudulent representation, the Commission shall not investigate the actions of, or conduct any disciplinary hearing regarding, any real estate broker or salesperson unless the complaint is filed or the investigation initiated within three (3) years from the date of the actions complained of or concerning which an investigation is initiated.

### **17-42-315. Criminal background check.**

(a)(1) Beginning January 1, 2006, the Arkansas Real Estate Commission may require each original applicant for a license issued by the commission to apply to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(2)(A) An applicant may sit for the examination required by § 17-42-302(a)(4) while awaiting the results of a background check prescribed by this section.

(B) No license shall be issued to an applicant until the commission receives and approves the state and federal criminal background check.

(b) The check shall conform to applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the Commission and shall be responsible for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the Commission all releasable information obtained concerning the applicant.

(e) At the conclusion of any background check required by this section, the Identification Bureau of the Department of Arkansas State Police shall be allowed to retain the fingerprint card of the applicant until notified by the Commission that the person is no longer licensed.

(f) Except as provided in subsection (g) of this section, a person shall not receive or hold a license issued by the commission if the person has been convicted of or pleaded guilty or nolo contendere to a felony or a crime involving moral turpitude, fraud, dishonesty, untruthfulness, or untrustworthiness.

(g)(1) The provisions of subsection (f) of this section may be waived by the Commission upon the request of:

- (A) An affected applicant for licensure; or
- (B) The person holding a license subject to sanctions.

(2) Circumstances for which a waiver may be granted shall include, but not be limited to, the following:

- (A) The age at which the crime was committed;
- (B) The circumstances surrounding the crime;
- (C) The length of time since the crime;
- (D) Subsequent work history;
- (E) Employment references;
- (F) Character references; and
- (G) Other evidence demonstrating that the applicant does not pose a threat to the public.

(h)(1) Any information received by the Commission from the Identification Bureau of the Department of Arkansas State Police or the Federal Bureau of Investigation pursuant to this section shall not be available for examination except by the affected applicant for licensure, or his or her authorized representative, or the person whose license is subject to sanctions, or his or her authorized representative.

(2) No record, file, or document shall be removed from the custody of the Department of Arkansas State Police.

(i) Any information made available to the affected applicant for licensure of the person whose license is subject to sanctions shall be information pertaining to that person only.

(j) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than the background check.

(k) The Commission may adopt rules and regulations to fully implement the provisions of this section.

#### **SUBCHAPTER 4 - APPLICABILITY - REAL ESTATE RECOVERY FUND - DISCIPLINARY ACTIONS**

##### **SECTION.**

- 17-42-401. Applicability.
  - 17-42-402. Construction.
  - 17-42-403. Creation - Administration.
  - 17-42-404. Fees - Use of fund.
  - 17-42-405. Additional fees.
  - 17-42-406. Disciplinary hearing - Procedure.
  - 17-42-407. Jurisdiction.
  - 17-42-408. Appeal.
  - 17-42-409. Subrogation - Suspension of license.
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#### **17-42-401. Applicability.**

The provisions of this subchapter shall apply only to:

- (1) Licensees who were licensed at the time of the occurrence of the acts or violations complained of; and
- (2) Acts or violations which occur after December 31, 1979.

#### **17-42-402. Construction.**

Nothing in this subchapter shall be construed to limit or restrict in any manner other civil or criminal remedies which may be available to any person.

#### **17-42-403. Creation - Administration.**

There is created and established the "Real Estate Recovery Fund," which shall be maintained and administered by the Arkansas Real Estate Commission as provided in this subchapter.

#### **17-42-404. Fees - Use of fund.**

(a) The Commission shall set the fees at such amount as it deems necessary to initially establish the fund and to reestablish the fund at the beginning of each annual renewal period. However, the fees shall not exceed the limits set forth in § 17-42-405.

(b) The assets of the fund may be invested and reinvested as the Commission may determine, with the advice of the State Board of Finance.

(c) Any amounts in the fund may be used by the Commission for the following additional purposes:

(1)(A) To fund educational seminars and other forms of educational projects for the use and benefit generally of licensees.

(B) The production and distribution of informational literature of an educational nature shall qualify as educational projects;

(2) To fund real estate chairs or courses at various state institutions of higher learning for the purpose of making such courses available to licensees and the general public;

(3) To fund research projects in the field of real estate; and

(4) To fund any and all other educational and research projects of a similar nature having to do with the advancement of the real estate field in Arkansas.

#### **17-42-405. Additional fees.**

(a) In addition to the other fees provided for in this chapter and Commission regulations, each licensed real estate broker and salesperson shall pay to the Commission for the benefit of the fund a fee as the Commission may require, not to exceed the lesser of:

(1) Twenty-five dollars (\$25.00) per annual renewal; or

(2) An amount sufficient to restore the fund balance to two hundred fifty thousand dollars (\$250,000).

(b) Likewise, each person who becomes a licensee for the first time shall at that time pay to the Commission for the benefit of the fund such fee as the Commission may require, not to exceed twenty-five dollars (\$25.00).

(c) No fees collected under the provisions of this subchapter may be expended from the fund except for the purposes set forth in this subchapter.

#### **17-42-406. Disciplinary hearing - Procedure.**

(a)(1) In any disciplinary hearing before the Commission which involves any licensee who has allegedly violated any provision of this chapter or Commission regulations, the Commission shall first determine whether a violation has occurred.

(2) If so, the Commission shall then determine the amount of damages, if any, suffered by the aggrieved party or parties. However, damages shall be limited to actual damages in accordance with § 17-42-407.

(3) The Commission shall then direct the licensee to pay that amount to the aggrieved party or parties.

(4) If that amount has not been paid within thirty (30) days following entry of the Commission's final order in the matter and the order has not been appealed to the circuit court, then the Commission shall, upon request, pay from the fund to the aggrieved party or parties the amount specified. However, the Commission shall not:

(A) Pay in excess of twenty-five thousand dollars (\$25,000) for any one (1) violation or continuing series of violations, regardless of the number of licensees who participated in such a violation or continuing series of violations; or

(B) Pay an amount in excess of the fund balance.

(b) The question of whether or not certain violations constitute a continuing series of violations shall be a matter solely within the discretion and judgment of the Commission.

(c) Nothing within this subchapter shall obligate the fund for any amount in excess of a total of seventy-five thousand dollars (\$75,000) with respect to:

(1) The acts of any one (1) licensee; or

(2) Any group of related claims.

(d) Whether or not a claim is one of a group of related claims shall be a matter solely within the discretion and judgment of the Commission.

(e) When unsatisfied or pending claims are such that they exceed the limits payable under subsection (c) of this section, the Commission shall be the sole determinant of how the available funds shall be allocated among such claims.

#### **17-42-407. Jurisdiction.**

(a) The Commission's jurisdiction and authority to award damages to an aggrieved party pursuant to § 17-42-406 is limited to actual, compensatory damages. The Commission shall not award punitive or exemplary damages, nor shall it award interest on damages.

(b) Likewise, the appellate jurisdiction of the circuit court is limited to the awarding of actual, compensatory damages.

(c) The circuit court shall have no authority or jurisdiction to assess punitive or exemplary damages under this subchapter.

(d) The circuit court's jurisdiction over the fund shall be limited to appeals from the Commission's orders.

(e) The circuit court shall have no jurisdiction or authority to order payments from the fund in any amount in excess of either:

(1) The amount determined by the Commission; or

(2) The limits set forth in § 17-42-406.

### **17-42-408. Appeal.**

(a) An appeal may be taken to the circuit court from a final order of the Commission in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) An appeal shall automatically stay that portion of the Commission's order which directs the payment of damages, and neither the licensee nor the Commission shall be obligated to pay the damages to the aggrieved party or parties until such time as the appeal is finally decided, whether in the circuit court or in the Arkansas Supreme Court.

### **17-42-409. Subrogation - Suspension of license.**

Upon the payment by the Commission of any amount of money under the provisions of § 17-42-406:

(1) The recipients of the payment, to the extent of the payment, shall assign to the Commission all rights and claims that they may have against the licensee involved;

(2) The Commission shall be subrogated to all of the rights of the recipients of the payment, to the extent of the payment; and

(3) In addition to any other disciplinary action taken against the licensee on the merits of the hearing, his or her license shall be immediately suspended until he or she has completely reimbursed the Commission for the payment, plus interest at a rate to be determined by the Commission, which rate shall not exceed ten percent (10%) per annum.

## **SUBCHAPTER 5 - RENEWAL OF LICENSES**

### **SECTION.**

17-42-501. Renewal or reactivation requirements.

17-42-502. Curriculum.

17-42-503. Nonqualifying courses or events.

17-42-504. Qualifying courses.

17-42-505. Instructor credentials.

17-42-506. Credit - Certificate of attendance.

17-42-507. Monitoring courses.

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### **17-42-501. Renewal or reactivation requirements.**

(a) As a condition precedent to renewal or activation of licenses, licensees shall meet the following requirements:

(1)(A) Licensees on inactive status are not required to comply with this subchapter during their inactive status.

(B)(i) Prior to activation of a license on inactive status, the licensee shall satisfactorily complete six (6) classroom hours or equivalent continuing education units or equivalent correspondence work of continuing education for each year inactive not to exceed thirty (30) classroom hours.

(ii) However, that will satisfy the requirements only for that particular license year and not for the following license year;

(2)(A)(i) Persons licensed as real estate brokers or salespersons shall successfully complete annually six (6) classroom hours or equivalent continuing education units or equivalent distance education of continuing education or a course that the Arkansas Real Estate Commission has determined demonstrates a mastery of an acceptable real estate subject.

(ii) No more than one (1) hour or equivalent continuing education unit shall be in a specific topic or topics as identified by the commission in § 17-42-502.

(B) Those persons shall be deemed to have successfully completed the continuing education requirements for the licensing year following the year in which first licensed in Arkansas;

(3) Provided the course or courses consist of no less than six (6) classroom hours or equivalent continuing education units of real estate-related subjects and otherwise comply with the minimum requirements of this subchapter, and further provided that evidence of such compliance satisfactory to the Commission is submitted in form, manner, and content prescribed by the Commission, a nonresident licensee may meet the Arkansas continuing education requirements by taking courses which meet the continuing education requirements of his or her resident state for the licensing year in question.

(b) The Commission may waive all or part of the requirements of subsection (a) of this section for any licensee who submits satisfactory evidence of inability to meet the continuing education requirements due to health reasons or other hardship or extenuating circumstances beyond the licensee's control.

(c) Licenses for persons who apply for renewal of their licenses and who do not provide to the Commission evidence of meeting the continuing education requirements, but who have otherwise met all requirements for license renewal, shall be placed on inactive status until the evidence is provided to the Commission.

#### **17-42-502. Curriculum.**

(a)(1) The Commission may establish the continuing education curriculum by identifying subject matter topics.

(2) The Commission may identify a specific topic or topics of not more than one (1) hour to be included in the six (6) classroom hour annual continuing education requirement.

(3) The Commission shall not require licensees to complete specific courses within the subject matter topics.

(4) Changes in the curriculum shall be applicable beginning with the license renewal period subsequent to the curriculum change.

(b) The board shall approve continuing education courses and may approve only those continuing education courses which meet the criteria prescribed by the Commission. In establishing such criteria, the Commission shall give due consideration to the advice and recommendations of the board.

(c) The board shall determine the classroom hour equivalency of correspondence courses.

#### **17-42-503. Nonqualifying courses or events.**

(a) The following do not qualify as continuing education:

(1) Courses of instruction designed to prepare a student for passing the real estate broker or salesperson examinations, except as provided in § 17-42-501(a);

(2) Sales promotions or other meetings held in conjunction with the general business of the licensee; and

(3) Time devoted to breakfasts, luncheons, and dinners.

(b) The same course may not be used to meet the continuing education requirement twice during the same license year.

#### **17-42-504. Qualifying courses.**

The following courses and their instructors are not required to obtain the approval of the State Board of Private Career Education in order to qualify as continuing education courses in this subchapter:

(1) Courses in real estate-related subjects offered by the National Association of Realtors, the National Association of Real Estate Brokers, or their societies, institutes, or councils;

- (2) Courses in real estate-related subjects offered or approved by the Arkansas Real Estate Commission; and
- (3) Courses of at least three (3) semester hours or equivalent in real estate subjects acceptable to the commission offered by colleges or universities.

#### **17-42-505. Instructor credentials.**

- (a) Except as provided in this subchapter, instructors in continuing education courses shall file credentials with the board showing the necessary specialized preparation, training, and experience to ensure competent and qualified instruction.
- (b) The board will prescribe instructor qualification credentials and education requirements based upon advice and recommendation of the Commission.

#### **17-42-506. Credit - Certificate of attendance.**

- (a) Credit shall be earned on the basis of attendance.
- (b)(1) A certificate of attendance which states the name of the student, the name of the school or sponsor of the course, the date the course was completed, the number of classroom hours of instruction covered by the individual course, and such other information as the Commission may require shall be presented to each attendee upon completion of the course.
- (2) No certificate of attendance shall be issued to a licensee who is absent for more than ten percent (10%) of the classroom hours.
- (3) Either a copy of the certificate or other proof of satisfactory completion of the course acceptable to the Commission shall be furnished to the Commission by the licensee.
- (4) It is the licensee's responsibility to establish his or her successful completion of a continuing education course.

#### **17-42-507. Monitoring courses.**

The Commission or its designee is authorized to attend and monitor any courses of instruction offered or to be offered as meeting the requirements of this chapter.

### **SUBCHAPTER 6 - INTEREST ON TRUST ACCOUNTS PROGRAM**

#### **SECTION.**

- 17-42-601. Establishment of program.
  - 17-42-602. Notice.
  - 17-42-603. Disposition of funds.
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#### **17-42-601. Establishment of program.**

(a) The Commission is hereby authorized and empowered, subject to the following restrictions and limitations, to establish a program authorizing and permitting the collection of interest on real estate brokers' trust accounts and the disbursement of such interest by the depository institutions involved to an Arkansas nonprofit corporation for use for such tax-exempt purposes as are hereinafter set forth.

(b) Participation in the program shall be completely voluntary with each broker rather than mandatory.

#### **17-42-602. Notice.**

(a) All real estate brokers participating in this program shall post a notice at least four inches by seven inches (4" x 7") stating that they participate in the interest on real estate brokers' trust accounts program.

(b) Said notice shall be displayed prominently and shall contain information concerning the purposes for which the interest accumulating on the account shall be used, and shall state: "If funds belonging to you are deposited in this firm's trust account, any interest earned therefrom will be forwarded by the depository bank to a nonprofit organization which will dispense the funds to provide for economic development, research, education, and such other public service purposes as may be determined by the recipient corporation selected by the Arkansas Real Estate Commission."

#### **17-42-603. Disposition of funds.**

(a)(1) The recipient of the funds generated by such program shall be such Arkansas nonprofit corporation as the Commission shall designate.

(2) Such corporation shall be governed by a board of directors consisting of not fewer than five (5) nor more than fifteen (15) members.

(3) At least sixty percent (60%) of the total number of directors shall be appointed by the Commission and the remainder by the Arkansas Realtors Association.

(4) The corporation shall be tax exempt as defined by § 501(c)(3) of the Internal Revenue Code.

(b) The funds generated by the program shall be used for economic development, research, education, and such other public service purposes as may be determined by the recipient corporation specified in this section.

### **SUBCHAPTER 7 — INTERFERENCE WITH REAL ESTATE LICENSEE RELATIONSHIPS**

#### **SECTION.**

17-42-701. Definitions.

17-42-702. Interference with licensee relationships prohibited.

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#### **17-42-701. Definitions.**

As used in this subchapter:

(1) "Actual introduction" means the referral of a principal to a licensee by the person or entity seeking the referral fee before the principal and licensee have engaged in material discussions regarding a specific real estate transaction;

- (2)(A) “Interference with a licensee relationship” means:
- (i) A demand for a referral fee from a licensee when reasonable cause for payment does not exist;
  - (ii) A threat to reduce, withhold, or eliminate any relocation or other benefits or the actual reduction, withholding, or elimination of any relocation or other benefit for the purpose of obtaining a referral fee from a licensee when reasonable cause for payment does not exist; or
  - (iii) An attempt to induce a principal to breach or terminate a representation agreement for the purpose of replacing that agreement with another representation agreement in order to obtain a referral fee.
- (B) “Interference with a licensee relationship” does not mean:
- (i) Communications between an employer or an employer’s representative and an employee concerning relocation policies and benefits if the communication does not involve advice about or encouragement to terminate or amend an existing representation agreement; and
  - (ii) Advice to a principal about the right to allow a licensee relationship to expire under its own Terms or not to renew the licensee relationship upon its expiration;
- (3) “Licensee relationship” means an agreement between a licensee and a principal under which the licensee agrees to act as a principal broker as defined in § 17-42-103;
- (4) “Principal” means the buyer; seller, landlord, or tenant in a licensee relationship;
- (5) “Reasonable cause for payment” means the creation of a cooperative or subagency relationship between licensees or a representation agreement as the result of an actual introduction of business;
- (6)(A) “Referral fee” means any mutually agreed-upon fee, commission, or other consideration to be paid by a licensee to any person or entity.
- (B) “Referral fee” does not mean a cooperative commission offered by a listing licensee to a selling licensee or by a selling licensee to a listing licensee; and
- (7)(A) “Representation agreement” means an agreement between a principal and a licensee in which the licensee agrees to perform any of the activities of a principal broker.
- (B) “Representation agreement” includes:
- (i) A buyer’s agency agreement, a property listing agreement, and a cooperative brokerage agreement; and
  - (ii) Any agreement containing any of the agreements described in subdivision (7)(B)(i) of this section.

#### **17-42-702. Interference with licensee relationships prohibited.**

- (a) No person shall knowingly interfere with a licensee relationship between a licensee and a person or entity.
- (b) No licensee shall be liable for a referral fee when reasonable cause for payment does not exist.
- (c)(1) Any person or entity aggrieved by a violation of this subchapter may bring a civil action in any court of competent jurisdiction.
- (2) The damages recoverable in an action under subdivision (c)(1) of this section shall be:
  - (A) The actual damages; and
  - (B) Reasonable attorney’s fees and expenses.
- (d) Nothing in this subchapter is intended to:
  - (1) Create a presumption that if reasonable cause for payment of a referral fee exists, a legal right to the referral fee exists; or
  - (2) Authorize the payment of a referral fee that is otherwise prohibited by law or regulation of the Arkansas Real Estate Commission.

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## **TITLE 18**

### **CHAPTER 14**

#### **REAL ESTATE TIME-SHARING**

##### **SUBCHAPTER.**

1. GENERAL PROVISIONS.
  2. ADMINISTRATION AND REGISTRATION.
  3. CREATION, TERMINATION, AND MANAGEMENT.
  4. PROTECTION OF PURCHASERS.
  5. ADVERTISING.
  6. FINANCING.
- 

#### **SUBCHAPTER 1 - GENERAL PROVISIONS**

##### **SECTION.**

- 18-14-101. Title.
  - 18-14-102. Definitions.
  - 18-14-103. Applicability.
  - 18-14-104. Legal status of time-share estates.
  - 18-14-105. Regulatory discrimination prohibited.
- 

##### **18-14-101. Title.**

This chapter shall be known and may be cited as the "Arkansas Time-Share Law."

##### **18-14-102. Definitions.**

As used in this chapter, unless the context otherwise requires:

(1) "Acquisition agent" means a person who by means of telephone, mail, advertisement, inducement, solicitation, or otherwise in the ordinary course of the acquisition agent's business attempts directly to encourage any person to attend a sales presentation for a time-share program;

(2) "Agency" means the Arkansas Real Estate Commission, which is an agency within the meaning of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

(3) "Developer" in the case of any given property, means any person or entity which is in the business of creating or which is in the business of selling its own time-share intervals in any time-share program. This definition does not include a person acting solely as a sales agent;

(4) "Development," "project," or "property" means all of the real property subject to a project instrument and containing more than one (1) unit;

(5) "Exchange agent" means a person who exchanges or offers to exchange time-share intervals in an exchange program with other time-share intervals;

(6) "Managing agent" means a person who undertakes the duties, responsibilities, and obligations of the management of a time-share program;

(7) "Offering" means any offer to sell, solicitation, inducement, or advertisement made in this state, whether directly or indirectly, whether by radio, television, newspaper, magazine, or by mail, whereby a person is given an opportunity or encouraged to acquire a time-share interval. This definition shall not include a property owner who may refer persons to a developer-owned sub-division provided that the owner's activities are limited to the referral of a prospective purchaser to the developer-owned subdivision and the time-share owner receives only nominal consideration which is not contingent upon the sale of a time-share interval;

(8) "Person" means one (1) or more natural persons, corporations, partnerships, associations, trusts, other entities, or any combination thereof;

(9) "Project instrument" means one (1) or more recordable documents applicable to the whole project, by whatever name denominated, containing restrictions or covenants regulating the use, occupancy, or disposition of an entire project, including any amendments to the document but excluding any law, ordinance, or governmental regulation;

(10) "Public offering statement" means that statement required by § 18-14-404;

(11) "Purchaser" means any person other than a developer or lender who acquires an interest in a time-share interval;

(12) "Sales agent" means a person who sells, or offers to sell, in his ordinary course of business, time-share intervals in a time-share program to a purchaser. All such sales agents shall be licensed and subject to the provisions of § 17-42-101 et seq. Provided, however, that the provisions of § 17-42-401 et seq. pertaining to the Real Estate Recovery Fund shall not apply to violations occurring as a result of, or in connection with, any Time-Share Law activity;

(13) "Time-share estate" means an ownership or leasehold estate in property devoted to a time-share fee such as tenants in common, time span ownership, or interval ownership, and a time-share lease;

(14) "Time-share instrument" means any document, by whatever name denominated, creating or regulating time-share programs, but excluding any law, ordinance, or governmental regulation;

(15) "Time-share interval" means a time-share estate or a time-share use;

(16) "Time-share program" means any arrangement for time-share intervals in a time-share project whereby the use, occupancy, or possession of real property has been made subject to either a time-share estate or time-share use whereby such use, occupancy, or possession circulates among purchasers of the time-share intervals according to a fixed or floating time schedule on a periodic basis occurring annually over any period of time in excess of three (3) years in duration;

(17) "Time-share project" means any real property that is subject to a time-share program;

(18) "Time-share use" means any contractual right of exclusive occupancy which does not fall within the definition of a time-share estate including, without limitation, a vacation license, club membership, limited partnership, or vacation bond pertaining to a time-share program;

(19) "Unit" means the real property or real property improvement in a project which is divided into time-share intervals.

#### **18-14-103. Applicability.**

This chapter shall apply to any time-share program created or commenced after February 25, 1983, and ninety (90) days thereafter as to any time-share program heretofore created or commenced with respect to the requirements of subchapters 2, 4, and 5 of this chapter.

#### **18-14-104. Legal status of time-share estates.**

(a) A time-share estate is an estate in real property and has the character and incidents of an estate in fee simple at common law. It may include an estate for years with a remainder over in fee simple or an estate for years with no remainder if a leasehold. The foregoing shall supersede any contrary rule at common law.

(b) A document transferring or encumbering a time-share estate in real property may not be rejected for recordation because of the nature or duration of that estate or interest.

(c) Each time-share estate constitutes, for purposes of title, a separate estate or interest in property, except for real property tax purposes.

#### **18-14-105. Regulatory discrimination prohibited.**

A zoning, subdivision, or other ordinance or regulation may not discriminate against the creation of time-share intervals or impose any requirement upon a time-share program which it would not impose upon a similar development under a different form of ownership.

## **SUBCHAPTER 2 - ADMINISTRATION AND REGISTRATION**

### **SECTION.**

- 18-14-201. Powers and duties of state agency.
- 18-14-202. Registration, etc., with agency required.
- 18-14-203. Exemptions from registration.
- 18-14-204. Application for registration.
- 18-14-205. Material changes.
- 18-14-206. Effectiveness of registration or amendment.
- 18-14-207. Regulation and use of public offering statement.

#### **18-14-201. Powers and duties of state agency.**

(a) The agency may adopt, amend, and repeal rules or regulations and issue orders consistent with, and in furtherance of, the objectives of this chapter. The agency may prescribe forms and procedures for submitting information to the agency.

(b) The agency may accept grants-in-aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions in furtherance of the objectives of this chapter.

(c) The agency may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices and may develop information that may be useful in the discharge of the agency's duties.

(d) The agency may initiate private investigations within or without this state.

(e) The agency, after notice and hearing, may issue a notice of suspension if any of the following conditions exist:

- (1) Any representation in any document or information filed with the agency is false or misleading;
- (2) Any developer or agent of a developer has engaged or is engaging in any unlawful act or practice;
- (3) Any developer or agent of a developer has disseminated or caused to be disseminated, orally or in writing, any false or misleading promotional materials in connection with a time-share program;
- (4) Any developer or agent of a developer has concealed, diverted, or disposed of any funds or assets of any person in a manner impairing rights of purchasers of time-share intervals in the time-share program;
- (5) Any developer or agent of a developer has failed to perform any stipulation or agreement made to induce the agency to issue an order relating to that time-share program; or
- (6) Any developer or agent of a developer has otherwise violated any provision of this chapter or the agency's rules, regulations, or orders.

(f) The agency may issue a cease and desist order if the developer has not registered the time-share program as required by this chapter.

(g) The agency, after notice and hearing, may issue an order revoking the registration of a time-share program upon determination that a developer or agent of a developer has failed to comply with a notice of suspension issued by the agency, which order affects the time-share program.

#### **18-14-202. Registration, etc., with agency required.**

(a)(1) Unless exempted by § 18-14-203, a developer may not offer or dispose of a time-share interval unless the time-share program is registered with the agency. However, a developer may accept a reservation together with a deposit if the deposit is placed in an escrow account with an institution having trust powers and is refundable at any time at the purchaser's option.

(2) In all cases, a reservation must require a subsequent affirmative act by the purchaser via a separate instrument to create a binding obligation.

(3) A developer may not dispose of or transfer a time-share interval while an order revoking or suspending the registration of the time-share program is in effect.

(b)(1) An acquisition agent shall register the time-share program or programs for which it is providing prospective purchasers with the agency unless there is an effective registration of the program or programs filed with the agency by the developer.

(2) In any event, the acquisition agent shall be required to furnish to the agency its principal office address and telephone number and designate its responsible managing employee. The acquisition agent shall also furnish such additional information as the agency may require.

(3) The acquisition agent shall furnish evidence that a bond of five thousand dollars (\$5,000) has been placed with a surety company, corporate bond acceptable to the agency, or a cash bond with the agency to cover any violations of any solicitation ordinances, zoning ordinances, building codes, or other regulations governing the use of the premises in which the time-share program is promoted.

(4) Each acquisition agent shall renew the registration at least annually and shall pay a filing fee of fifty dollars (\$50.00) for the registration and each renewal thereof.

(c) A sales agent shall register with the agency the time-share program or programs for which it is selling unless there is an effective registration of the program or programs filed with the agency by the developer. In any event, the sales agent shall be required to furnish to the agency its principal office address and telephone number and designate its responsible managing employee and any special escrow accounts set up for the deposit and collection of purchasers' funds and shall furnish such additional information as the agency may require. The sales agent shall furnish evidence that a bond of five thousand dollars (\$5,000) has been placed with a surety company, corporate bond acceptable to the agency, or a cash bond with the agency to cover any defalcations of the sales agent. Each individual sales



agent shall renew his registration annually and shall pay a filing fee of fifty dollars (\$50.00) for the registration and each renewal thereof.

(d) A managing agent shall register with the agency the time-share program or programs for which it is managing unless there is an effective registration of the program or programs filed with the agency by the developer. In any event, the managing agent shall be required to furnish to the agency its principal office address and telephone number, to designate its responsible managing employee, and to furnish such additional information as the agency may require. The managing agent shall furnish evidence that a bond of five thousand dollars (\$5,000) has been placed with a surety company, corporate bond acceptable to the agency, or a cash bond with the agency to cover any default of the managing agent of his duties and responsibilities. Each managing agent shall renew the registration at least annually and shall pay a filing fee of fifty dollars (\$50.00) with each registration and renewal thereof.

(e) In the event that the acquisition agent, sales agent, or management agent is under the control of, a subsidiary of, or affiliate of the developer or any person, the bond as to such agents, whether one or more, can be consolidated and reduced to fifty thousand dollars (\$50,000), provided that there is a disclosure of the affiliation to the agency. Where the developer registers additional time-share projects, including additional phases of existing time-share projects, with the commission, the developer shall not be required to furnish an additional bond or increase the existing bond for the additional registration provided the initial bond remains in effect.

(f) An exchange agent, including the developer if it is also the exchange agent, shall file a statement with the agency containing a list of the time-share program or programs that it is offering exchange services for, indicate its principal office address and telephone number, and designate who its responsible managing employee is or the person to whom any contact is to be made.

(g) The acquisition agent and sales agent shall each maintain their respective records of any independent contractors employed by them, their addresses, and the commissions paid for the immediately preceding two (2) calendar years.

(h) Any interest earned on any bond or substitute therefor, whether cash, certificate of deposit, bank account, security, or other instrument, while on deposit with, or for the benefit of, the agency shall become the separate property of the agency and shall be deposited in the Real Estate Recovery Fund, as created in § 17-42-403.

### **18-14-203. Exemptions from registration.**

(a) No registration with the agency shall be required if the developer is registered and there has been issued a public offering statement or similar disclosure document which is provided to purchasers under the following:

- (1) Securities and Exchange Act of 1933;
- (2) Arkansas Securities Act, § 23-42-101 et seq.;
- (3) Federal Interstate Land Sales Full Disclosure Act, in which the time-share program is made a part of the subdivision that is being registered.

(4)(A) Any federal or state act which requires a federal or state agency to review a public offering statement, or similar disclosure document which is required to be distributed to purchasers, if the agency determines after review that the federal or state public offering statement is substantially equivalent to that required by this chapter and issues its certificate of exemption.

(B) Whenever a public offering statement is amended, and at least annually in any event, the public offering statement shall be submitted to the agency for its review and recertification.

(C) Applicants for certificates of exemption shall pay a filing fee of three hundred dollars (\$300) and any necessary investigation expenses as set forth in § 18-14-204(d) and a fee of one hundred fifty dollars (\$150) for each request for review and recertification pursuant to subsection (a)(4)(B) of this section.

- (b) No registration with the agency shall be required in the case of:
- (1) Any transfer of a time-share interval by any time-share interval owner other than the developer or his agent unless the transfer is made for the purpose of evading the provisions of this chapter;
  - (2) Any disposition pursuant to court order;
  - (6) A disposition by a government or governmental agency;
  - (7) A disposition by foreclosure or deed in lieu of foreclosure; or
  - (5) A gratuitous transfer of a time-share interval.

#### **18-14-204. Application for registration.**

(a) An application for registration shall contain the public offering statement, a brief description of the property, copies of time-share instruments, financial statements prepared in accordance with generally accepted accounting principles fully and fairly disclosing the current financial condition of the developer, and any documents referred to therein and such other information as may be required by the agency.

(b) If the dwelling units in the time-share project are in a condominium development or other common-interest subdivision, the application for registration shall contain evidence that the use of the units for time-share purposes is not prohibited by the project instruments and, if the project instruments do not expressly authorize time-sharing, evidence that purchasers in the condominium development or other common-interest subdivision were given at least sixty (60) days' notice in writing prior to the application for registration that the units would be used for time-share purposes. In the event the project instruments contain a prohibition against time-sharing, there must be a certification by the board of directors of the association that any procedures specified in the project instruments for the amendment of such instruments, in order to permit time-sharing, have been followed and that the project instruments have been duly amended to permit time-sharing.

(c) The application shall be accompanied by a filing fee of three hundred dollars (\$300) plus five dollars (\$5.00) for each twenty-five (25) time-share intervals or portions thereof. The filing fee shall not exceed the sum of five hundred dollars (\$500).

(d) The agency shall thoroughly investigate all matters relating to the application and may require a personal inspection of the real estate by a person or persons designated by it. All direct expenses incurred by the agency in inspecting the real estate shall be borne by the applicant, and the agency may require a deposit sufficient to cover the direct expenses prior to incurring them.

(e) All applications for registration shall be updated and renewed at least annually, and the renewal shall be accompanied by a filing fee of one-half (1/2) the amount of the original filing fee.

#### **18-14-205. Material changes.**

A developer shall amend or supplement its registration to report any material change in the information required by § 18-14-204.

#### **18-14-206. Effectiveness of registration or amendment.**

(a) Except as hereinafter provided, the effective date of the registration or any amendment thereto, shall be the forty-fifth day after the filing thereof, or such earlier date as the agency may determine, having due regard to the public interest and the protection of purchasers. If any amendment to any registration is filed prior to the effective date, the registration shall be deemed to have been filed when the amendment was filed.

(b) If it appears to the agency that the application for registration, or any amendment thereto is on its face incomplete or inaccurate in any material respect, the agency shall so advise the developer by listing each specific deficiency in writing prior to the date the registration would otherwise be effective. The notification shall serve to suspend the effective date of the filing until the tenth day after the developer files such additional information as the agency shall require. Any developer, upon receipt of the notice of deficiencies, may request a hearing, and the hearing shall be held within thirty (30) days of receipt of the request.

#### **18-14-207. Regulation and use of public offering statement.**

(a) The agency, at any time, may require a developer to alter or supplement the form or substance of a public offering statement to assure adequate and accurate disclosure to prospective purchasers. In order to ensure adequate protection of the purchaser through disclosure, the agency may require that certain disclosures contained in the public offering statement be placed in boldface type.

(b) The public offering statement may not be used for any promotional purposes before registration, and the statement may be used afterwards only if it is used in its entirety. No person may advertise or represent that the agency has approved or recommended the time-share program, the disclosure statement, or any of the documents contained in the application for registration.

### **SUBCHAPTER 3 - CREATION, TERMINATION, AND MANAGEMENT**

#### **SECTION.**

- 18-14-301. Time-share programs permitted.
  - 18-14-302. Contents of instruments creating time-share estates.
  - 18-14-303. Provisions for management and operation of time-share estate programs.
  - 18-14-304. Developer control period.
  - 18-14-305. Instruments creating time-share uses.
  - 18-14-306. Provisions for management and operation of time-share use programs.
  - 18-14-307. Partition of units.
- 

#### **18-14-301. Time-share programs permitted.**

A time-share program may be created in any unit, unless expressly prohibited by the project instruments.

#### **18-14-302. Contents of instruments creating time-share estates.**

Project instruments and time-share instruments creating time-share estates must contain the following:

- (1) The name of the county in which the property is situated;
- (2) The legal description, street address, or other description sufficient to identify the property;
- (3) Identification of time periods by letter, name, number, or combination thereof;
- (4) Identification of time-share estates and, where applicable, the method whereby additional time-share estates may be created;

(5) The formula, fraction, or percentage of the common expenses and any voting rights assigned to each time-share estate and, where applicable, to each unit in a project that is not subject to the time-share program;

(6) Any restrictions on the use, occupancy, alteration, or alienation of time-share intervals;

(7) The ownership interest, if any, in personal property and provisions for care and replacement;

(8) Any other matters the developer deems appropriate;

(9) Any provisions pertaining to the establishment of a lien against an owner's time-share interest in favor of the association of time-share estate owners to secure payment of common expenses. This lien when provided for in the time-share instrument shall be enforceable and foreclosable in the same manner in which other statutory liens are enforceable and foreclosable under the laws of this state.

#### **18-14-303. Provisions for management and operation of time-share estate programs.**

The time-share instruments for a time-share estate program shall prescribe reasonable arrangements for management and operation of the time-share program and for the maintenance, repair, and furnishing of units, which shall ordinarily include, but need not be limited to, provisions for the following:

(1) Creation of an association of time-share estate owners;

(2) Adoption of by laws for organizing and operating the association;

(3) Payment of costs and expenses of operating the time-share program and owning and maintaining the units;

(4) Employment and termination of employment of the managing agent for the association;

(5) Preparation and dissemination to owners of an annual budget and of operating statements and other financial information concerning the time-share program;

(6) Adoption of standards and rules of conduct for the use and occupancy of units by owners;

(7) Collection of assessments from owners to defray the expenses of management of the time-share program and maintenance of the units and time-share project;

(8) Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use of units by owners, their guests, and other users;

(9) Methods for providing compensating use periods or monetary compensation to an owner if a unit cannot be made available for the period to which the owner is entitled by schedule or by confirmed reservation;

(10) Procedures for imposing a monetary penalty or suspension of an owner's rights and privileges in the time-share program for failure of the owner to comply with provisions of the time-share instruments or the rules of the association with respect to the use of the units. Under these procedures an owner must be given notice and the opportunity to refute or explain the charges against him in person or in writing to the governing body of the association before a decision to impose discipline is rendered. Any monetary penalty may be secured by the lien provided for in § 18-14-302;

(11) Employment of attorneys, accountants, and other professional persons as necessary to assist in the management of the time-share program and the units.

#### **18-14-304. Developer control period.**

(a) The time-share instruments for a time-share estate program may provide for a period of time, hereafter referred to as the "developer control period," during which the developer, or a managing agent selected by the developer, may manage the time-share program and the units in the time-share program.

(b) If the time-share instruments for a time-share estate program provide for the establishment of a developer control period, they shall ordinarily include provisions for the following:

(1) Termination of the developer control period by action of the association;

- (2) Termination of contracts for goods and services for the time-share program or for units in the time-share program entered into during the developer control period;
- (3) A regular accounting by the developer to the association as to all matters that significantly affect the interests of owners in the time-share program.

#### **18-14-305. Instruments creating time-share uses.**

Project instruments and time-share instruments creating time-share uses must contain the following:

- (1) Identification by name of the time-share project and street address where the time-share project is situated;
- (2) Identification of the time periods, type of units, and the units that are in the time-share program and the length of time that the units are committed to the time-share program;
- (3) In case of a time-share project, identification of which units are in the time-share program and the method whereby any other units may be added, deleted, or substituted;
- (4) Any other matters that the developer deems appropriate.

#### **18-14-306. Provisions for management and operation of time-share use programs.**

The time-share instruments for a time-share use program shall prescribe reasonable arrangements for management and operation of the time-share program and for the maintenance, repair, and furnishing of units which shall ordinarily include, but need not be limited to, provisions for the following:

- (1) Standards and procedures for upkeep, repair, and interior furnishing of units and for providing of maid, cleaning, linen, and similar services to the units during use periods;
- (2) Adoption of standards and rules of conduct governing the use and occupancy of units by owners;
- (3) Payment of the costs and expenses of operating the time-share program and owning and maintaining the units;
- (4) Selection of a managing agent;
- (5) Preparation and dissemination to owners of an annual budget and of operating statements and other financial information concerning the time-share program;
- (6) Procedures for establishing the rights of owners to the use of units by prearrangement or under a first-reserved, first-served priority system;
- (7) Organization of a management advisory board consisting of time-share use owners, including an enumeration of rights and responsibilities of the board;
- (8) Procedures for imposing and collecting assessments or use fees from time-share use owners as necessary to defray costs of management of the time-share program and in providing materials and services to the units;
- (9) Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use of units by time-share use owners, their guests, and other users;
- (10) Methods for providing compensating use periods or monetary compensation to an owner if a unit cannot be made available for the period to which the owner is entitled by schedule or by a confirmed reservation;
- (11) Procedures for imposing a monetary penalty or suspension of an owner's rights and privileges in the time-share program for failure of the owner to comply with the provisions of the time-share instruments or the rules established by the developer with respect to the use of the units. The owner shall be given notice and the opportunity to refute or explain the charges, in person or in writing, to the management advisory board before a decision to impose discipline is rendered;
- (12) Annual dissemination to all time-share use owners by the developer, or by the managing agent, of a list of the names and mailing addresses of all current time-share use owners in the time-share program.

### **18-14-307. Partition of units.**

No action for partition of a unit may be maintained except as permitted by the time-share instrument.

## **SUBCHAPTER 4 - PROTECTION OF PURCHASERS**

### **SECTION.**

- 18-14-401. Penalties.
  - 18-14-402. Civil remedies.
  - 18-14-403. Statute of limitations.
  - 18-14-404. Required contents of public offering statements for time-share intervals.
  - 18-14-405. Material changes.
  - 18-14-406. Other statutes not applicable.
  - 18-14-407. Escrow accounts or other financial assurances.
  - 18-14-408. Guarantees for completion of time-share projects.
  - 18-14-409. Mutual rights of cancellation.
  - 18-14-410. Liens.
  - 18-14-411. Financial records - Examination.
- 

### **18-14-401. Penalties.**

Any developer or any other person subject to this chapter who offers or disposes of a time-share interval without having complied with this chapter or who violates any provision of this chapter shall be guilty of a misdemeanor punishable by a fine not exceeding five thousand dollars (\$5,000) or by imprisonment in the state prison or in the county jail not exceeding one (1) year, or by both fine and imprisonment.

### **18-14-402. Civil remedies.**

(a) If a developer or any other person subject to this chapter violates any provision thereof or any provision of the project instruments, any person or class of persons adversely affected by the violation or violations has a claim for appropriate relief. Punitive damages or attorney's fees, or both, may be awarded for willful violation of this chapter.

(b) The Real Estate Recovery Fund, § 17-42-403, shall not apply to any claims arising from or damages caused by a violation or violations of this chapter or of the Real Estate License Law, § 17-42-101 et seq., or regulations by any licensee while engaged in any Time-Share Law activities.

### **18-14-403. Statute of limitations.**

A judicial proceeding where the accuracy of the public offering statement or validity of any contract of purchase is in issue and a rescission of the contract or damages is sought must be commenced within four (4) years after the date of the contract of purchase, notwithstanding that the purchaser's terms of payments may extend beyond the period of limitation. However, with respect to the enforcement of provisions in the contract of purchase which require the continued furnishing of services and the reciprocal payments to

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be made by the purchaser, the period of bringing a judicial proceeding will continue for a period of four (4) years for each breach, but the parties may agree to reduce the period of limitation to not less than two (2) years.

#### **18-14-404. Required contents of public offering statements for time-share intervals.**

(a) A public offering statement must be provided to each purchaser of a time-share interval and must contain or fully and accurately disclose:

(1) The name of the developer and the principal address of the developer and the time-share intervals offered in the statement;

(2) A general description of the units including, without limitation, the developer's schedule of commencement and completion of all buildings, units, and amenities or, if completed, that they have been completed;

(3) As to all units offered by the developer in the same time-share project:

(A) The types and number of units;

(B) Identification of units that are subject to time-share intervals; and

(C) The estimated number of units that may become subject to time-share intervals;

(4) A brief description of the project;

(5) If applicable, any current budget and projected budget for the time-share intervals for one (1) year after the date of the first transfer to a purchaser. The budget must include, without limitation:

(A) A statement of the amount included in the budget as a reserve for repairs and replacement;

(B) The projected common expense liability, if any, by category or expenditures for the time-share intervals;

(C) The projected common expense liability for all time-share intervals; and

(D) A statement of any services not reflected in the budget that the developer provides or expenses that it pays;

(6) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;

(7) A description of any liens, defects, or encumbrances on, or affecting, the title to the time-share intervals;

(8) A description of any financing offered by the developer;

(9) A statement that, within five (5) days after execution of a contract of purchase, a purchaser may cancel any contract for purchase of a time-share interval from a developer;

(10) A statement of any pending suits material to the time-share intervals of which a developer has actual knowledge;

(11) Any restraints on alienation of any number or portion of any time-share intervals;

(12) A description of the insurance coverage which shall be provided for the benefit of time-share interval owners;

(13) Any current or expected fees or charges to be paid by time-share interval owners for the use of any facilities related to the property;

(14) The extent to which financial arrangements have been provided for completion of all promised improvements; and

(15) The extent to which a time-share unit may become subject to a tax or other lien arising out of claims against other owners of the same unit.

(b) If a purchaser is offered the opportunity to subscribe to any program that provides exchanges of time-shares among purchasers in either the same time-sharing project or other time-sharing projects, or both, the developer shall deliver to the purchaser, prior to the execution of any contract between the purchaser and the company offering the exchange program, written information regarding such exchange program. The purchaser shall certify in writing to the receipt of the written information, which information shall include, but is not limited to, the following:

- (1) The name and address of the exchange program;
- (2) The names of all officers and directors;
- (3) Whether the exchange program, or any of its officers or directors, has any legal or beneficial interest in any developer or managing agent for any time-sharing plan participating in the exchange program and, if so, the name and location of the time-sharing plan and the nature of the interest;
- (4) Unless otherwise stated, a statement that the purchaser's contract with the exchange program is a contract separate and distinct from the purchaser's contract with the developer;
- (5) Whether the purchaser's participation in the exchange program is dependent upon the continued affiliation of the time-sharing project with the exchange program;
- (6) Whether the purchaser's membership or participation, or both, in the exchange program is voluntary or mandatory;
- (7) A complete and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange program and the procedure by which changes thereto may be made;
- (8) A complete and accurate description of the procedure to qualify for and effectuate exchanges;
- (9) A complete and accurate description of all limitations, restrictions, or priorities employed in the operation of the exchange program including, but not limited to, limitations on exchanges based on seasonality, unit size, or levels of occupancy, expressed in bold-faced type and, in the event that such limitations, restrictions, or priorities are not uniformly applied by the exchange program, a clear description of the manner in which they are applied;
- (10) Whether exchanges are arranged on a space-available basis and whether any guarantees of fulfillment of specific requests for exchanges are made by the exchange program;
- (11) Whether and under what circumstances, a purchaser, in dealing with the exchange program, may lose the use and occupancy of his time-share in any properly applied for exchange without his being provided with substitute accommodations by the exchange program;
- (12) The fees or range of fees for participation by purchasers in the exchange program, a statement whether any such fees may be altered by the exchange company, and the circumstances under which alterations may be made;
- (13) The name and address of the site of each accommodation or facility included in the time-sharing projects which are participating in the exchange program as of the last annual audit;
- (14) The number of time-share units in each time-sharing project which are available for occupancy, pursuant to the last annual audit, and which qualify for participation in the exchange program, expressed within the following numerical groupings: 1-5, 6-10, 11-20, 21-50, and 51 and over;
- (15) The number of purchasers enrolled for each time-sharing project participating in the exchange program, pursuant to the last annual audit, expressed within the following numerical groupings: 1-100, 101-249, 250-499, 500-999, and 1,000 and over, and a statement of the criteria used to determine those purchasers who are currently enrolled with the exchange program;
- (16) The disposition made by the exchange company of time-shares deposited with the exchange program by purchasers enrolled in the exchange program and not used by the exchange company in effecting changes;
- (17) The following information, which shall be independently audited by a certified public accountant or accounting firm in accordance with the standards of the Accounting Standards Board of the American Institute of Certified Public Accountants and reported on an annual basis:
  - (A) The number of purchasers currently enrolled in the exchange program;
  - (B) The number of accommodations and facilities that have current written affiliation agreements with the exchange program;
  - (C) The percentage of confirmed exchanges, which shall be the number of exchanges confirmed by the exchange program divided by the number of exchanges properly applied for, together with a complete and accurate statement of the criteria used to determine whether an exchange request was properly applied for;



(D) The number of time-share periods for which the exchange program has an outstanding obligation to provide an exchange to a purchaser who relinquished a time-share during the year in exchange for a time-share in any future year;

(E) The number of exchanges confirmed by the exchange program during the year;

(18) A statement in bold-faced type to the effect that the percentage described in subsection (b)(17)(C) of this section is a summary of the exchange requests entered with the exchange program in the period reported and that the percentage does not indicate a purchaser's probabilities of being confirmed to any specific choice or range of choices, since availability at individual locations may vary.

(c) Each exchange company offering an exchange program to purchasers in this state must include the statement set forth in subsection (b)(18) of this section on all promotional brochures, pamphlets, advertisements, or other materials disseminated by the exchange company which also contain the percentage of confirmed exchanges described in subsection (b)(17)(C) of this section.

(d) A developer may satisfy the requirements of this section by delivery to purchasers of materials furnished to the developer by the exchange program, provided the exchange program has certified to the developer that the materials satisfy the requirements of this section. A developer shall have no liability to any person if the materials furnished by the exchange program fail to comply with this section.

#### **18-14-405. Material changes.**

The developer shall amend or supplement the public offering statement to report any material change in the information required by § 18-14-404. As to any exchange program, the developer shall use the current written materials that are supplied to it for distribution to the time-share interval owners as it is received.

#### **18-14-406. Other statutes not applicable.**

(a) Any time-share program in which a public offering statement has been prepared pursuant to this chapter does not require registration under any of the following:

(1) Arkansas Securities Act, § 23-42-101 et seq.;

(2) Any other Arkansas statute which requires the preparation of a public offering statement or substantially similar document for distribution to purchasers.

(b) Any time-share program that fails to restrict the price at which an owner may sell or exchange his time-share interval shall not by virtue of such failure cause the time-share interval to become a security under the Arkansas Securities Act. An exchange agent offering such a time-share interval for exchange shall not be construed to be offering a security under such act.

#### **18-14-407. Escrow accounts or other financial assurances.**

(a) Any deposit made in connection with the purchase or reservation of a time-share interval from a developer must be placed in a noninterest-bearing escrow account and held in this state, in an account designated solely for the purpose, by an independent bonded escrow company, or in an institution whose accounts are insured by a governmental agency or instrumentality until:

(1) Delivered to the developer at the expiration of the time for rescission or any later time specified in any contract or sale;

(2) Delivered to the developer because of the purchaser's default under a contract to purchase the time-share interval; or

(3) Refunded to the purchaser.

(b)(1) In lieu of any escrows required by this section, the agency shall have the discretion to accept other financial assurances including, but not limited to, a surety bond, an irrevocable letter of credit, or a cash deposit in an amount equal to the escrow requirements of this section.

(2) Interest earned on any such bond or other deposit while deposited with, or for the benefit of, the agency shall become the property of the agency and shall be deposited in the Real Estate Recovery Fund created in § 17-42-403.

#### **18-14-408. Guarantees for completion of time-share projects.**

(a) If a developer contracts to sell a time-share interval and the construction, furnishings, and landscaping of the time-share project have not been substantially completed in accordance with the representations made by the developer in the disclosures required by this chapter, the developer shall:

(1) Pay into an escrow account established and held in this state, in an account designated solely for the purpose, by an independent bonded escrow company, or in an institution whose accounts are insured by a governmental agency or instrumentality, all payments received by the developer from the purchaser towards the sale price until the project is substantially complete. The escrow agent may invest the escrow funds in securities for the United States, or any agency thereof, or in savings or time deposits in institutions insured by an agency of the United States. Funds shall be released from escrow as follows:

(A) If a purchaser properly terminates the contract pursuant to its terms or pursuant to this chapter, the funds shall be paid to the purchaser, together with any interest earned;

(B) If the purchaser defaults in the performance of his obligations under the contract of purchase and sale, the funds shall be paid to the developer, together with any interest earned;

(C) If the funds of a purchaser have not been previously disbursed in accordance with the provisions of this subsection, they may be disbursed to the developer by the escrow agent upon substantial completion of the time-share project;

(2) The developer shall not be required to comply with sub-section (a)(1) of this section when the agency has been furnished and is satisfied that all of the following provisions have been met:

(A) That the developer is an Arkansas corporation or a foreign corporation qualified to do business in Arkansas;

(B) That the corporation has been in existence and operated for not less than three (3) years within the State of Arkansas;

(C) That the corporation has net assets within this state of an amount not less than three (3) times the cost to complete the time-share project;

(D) The agency shall have the discretion to require such other assurances as may reasonably be required either to assure completion of the time-share project or to reimburse the purchaser all funds paid to the developer together with any interest earned;

(3)(A) In lieu of any escrows required by this section, the agency shall have the discretion to accept other financial assurances including, but not limited to, a performance bond or an irrevocable letter of credit in an amount equal to the cost to complete the time-share project.

(B) Interest earned on any such bond, letter of credit, deposit, or other instrument while deposited with, or for the benefit of, the agency shall become the separate property of the agency and shall be deposited in the Real Estate Recovery Fund created in § 17-42-403.

(b) For the purpose of this section, "substantially completed" means that all amenities, furnishings, appliances, and structural components and mechanical systems of buildings on all real property dedicated to the project and subject to the project instruments are completed and provided as represented in the public offering statement, that the premises are ready for occupancy, and that the proper governmental authority has caused to be issued a certificate of occupancy.

**18-14-409. Mutual rights of cancellation.**

(a) Before transfer of a time-share interval, and no later than the date of any sales contract, the developer shall provide the intended transferee with a copy of the public offering statement and any amendments and supplements thereto. The contract is voidable by the purchaser until he has received the public offering statement. In addition, the contract is voidable by the purchaser for five (5) days after execution of the contract of sale. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded within a reasonable time after receipt of the notice of cancellation as provided in subsection (c) of this section.

(b) Up to five (5) days after execution of the contract of sale, the developer may cancel the contract of purchase without penalty to either party. The developer shall return all payments made and the purchaser shall return all materials received in good condition, reasonable wear and tear excepted. If the materials are not returned, the developer may deduct the cost of them and return the balance to the purchaser.

(c) If either party elects to cancel a contract pursuant to subsections (a) or (b) of this section, he may do so by hand-delivering notice thereof to the other party or by mailing notice thereof by prepaid United States mail to the other party or to his agent for service of process, which notice shall be deemed given when deposited in the United States mail.

**18-14-410. Liens.**

(a) Prior to the transfer of a time-share interval, the developer shall record, or furnish to the purchaser, releases of all liens affecting that time-share interval or shall provide a surety bond or insurance against the lien from a company acceptable to the agency, as provided for liens on real estate in this state; or such underlying lien document shall contain a provision wherein the lien holder subordinates its rights to that of a time-share purchaser who fully complies with all of the provisions and terms of the contract of sale.

(b) Unless a time-share interval owner or his predecessor in title agrees otherwise with the lienor, if a lien other than a mortgage or deed of trust becomes effective against more than one (1) time-share interval in a time-share project, any time-share interval owner is entitled to a release of his time-share interval from the lien upon payment of the amount of the lien attributable to his time-share interval. The amount of the payment must be proportionate to the ratio that the time-share interval owner's liability bears to the liabilities of all time-share interval owners whose interests are subject to the lien. Upon receipt of payment, the lien holder shall promptly deliver to the time-share interval owner a release of the lien covering that time-share interval. After payment, the managing entity may not assess or have a lien against that time-share interval for any portion of the expenses incurred in connection with that lien.

**18-14-411. Financial records - Examination.**

(a) The person or entity responsible for making or collecting common expense assessments or maintenance assessments shall keep detailed financial records.

(b) All financial and other records shall be made reasonably available for examination by any time-share interval owner and his authorized agents.

## **SUBCHAPTER 5 - ADVERTISING**

### **SECTION.**

- 18-14-501. Filing of advertising materials.
  - 18-14-502. False advertising declared unlawful.
  - 18-14-503. Prohibited advertising.
  - 18-14-504. Unfair acts or practices.
  - 18-14-505. Enforcement.
- 

#### **18-14-501. Filing of advertising materials.**

(a) All advertising materials proposed for use in this state by any person in connection with the offer or sale of time-shares shall be filed with the agency within ten (10) days of their use.

(b) Each separate filing of advertising materials shall be accompanied by a filing fee of ten dollars (\$10.00).

(c) Advertising materials include, but are not limited to, the following:

- (1) Promotional brochures, pamphlets, advertisements, or other materials to be disseminated to the public in connection with the sale of time-shares;
- (2) Transcripts of all radio and television advertisements;
- (3) Offers of travel, accommodations, meals, or entertainment at no cost or reduced cost;
- (4) Direct mail solicitation;
- (5) Advertising, including testimonials or endorsements;
- (6) Scripts or standardized narrative for use in making telephone solicitations.

#### **18-14-502. False advertising declared unlawful.**

(a) It shall be unlawful for any person with intent, directly or indirectly, to offer for sale or sell time-shares in this state to authorize, use, direct, or aid in the publication, distribution, or circulation of any advertisement, radio broadcast, or telecast concerning the time-share project in which the time-shares are offered which contains any statement, pictorial representation, or sketch which is false or misleading.

(b) Nothing in this section shall be construed to hold the publisher or employee of any newspaper, any job printer, any broadcaster or telecaster, or any magazine publisher, or any of the employees thereof, liable for any publication herein referred to unless the publisher, employee, or printer has actual knowledge of the falsity thereof or has an interest either as an owner or agent in the time-share project so advertised.

#### **18-14-503. Prohibited advertising.**

No advertising for the offer or sale of time-shares shall:

- (1) Contain any representation as to the availability of a resale program or rental program offered by, or on behalf of, the developer or its affiliate, unless the resale program or rental program has been made a part of the offering and submitted to the agency;
- (2) Contain an offer or inducement to purchase which purports to be limited as to quantity or restricted as to time, unless the numerical quantity or time applicable to the offer or inducement is clearly and conspicuously disclosed;

(3) Contain any statement concerning the investment merit or profit potential of the time-share, unless the agency has determined from evidence submitted on behalf of the developer that the representation is neither false nor misleading;

(4) Make a prediction of or imply specific or immediate increases in the price or value of the time-shares; nor shall a price increase of a time-share be announced more than sixty (60) days prior to the date that the increase will be placed into effect;

(5) Contain statements concerning the availability of time-shares at a particular minimum price if the number of time-shares available at that price comprises less than ten percent (10%) of the unsold inventory of the developer, unless the number of time-shares then for sale at the minimum price is set forth in the advertisement;

(6) Contain any statement that the time-share being offered for sale can be further divided, unless a full disclosure is included as to the legal requirements for further division of the time-share;

(7) Contain any asterisk or other reference symbol as a means of contradicting or changing the ordinary meaning of any previously made statement in the advertisement;

(8) Misrepresent the size, nature, extent, qualities, or characteristics of the accommodations or facilities which comprise the time-share project;

(9) Misrepresent the nature or extent of any services incident to the time-share project;

(10) Misrepresent or imply that a facility or service is available for the exclusive use of purchasers or owners if a public right of access or of use of the facility or service exists;

(11) Make any misleading or deceptive representation with respect to the contents of the time-share permit, the purchase contract, the purchaser's rights, privileges, benefits, or obligations under the purchase contract or this chapter;

(12) Misrepresent the conditions under which a purchaser or owner may participate in an exchange program;

(13) Describe any proposed or uncompleted private facilities over which the developer has no control unless the estimated date of completion is set forth and evidence has been presented to the agency that the completion and operation of the facilities are reasonably assured within the time represented in the advertisement.

#### **18-14-504. Unfair acts or practices.**

(a) It is unlawful for any person to offer, by mail, by telephone, or in person, a prize or gift, with the intent to offer a sales presentation for a time-share project, without disclosing at the time of the offer of the prize or gift, in a clear and unequivocal manner, the intent to offer the sales presentation.

(b) The following unfair acts or practices undertaken by, or omissions of, any person in the operation of any prize or gift promotional offer for a time-share project are prohibited:

(1) Failing clearly and conspicuously to disclose the rules, regulations, terms, and conditions of the promotional program; a description of the prizes offered, if any; and the date on or before which the prize or gift offer will terminate or expire;

(2) Failing to disclose the retail value of the gift or prize and the odds of winning. The person making the offer must maintain a sufficient inventory of the gift or prize so as to be able to equal the reasonable response to the offer;

(3) Failing to obtain the express written or oral consent of individuals before their names are used for a promotional purpose in connection with a mailing to a third person;

(4) Failing to award and distribute at least one (1) of each prize or gift of the value and type represented in the promotional program by the day and year specified in the promotion. When a promotion promises the award of a prescribed number of each prize, this number of prizes shall be awarded by the date and year specified in the promotion;

(5) Misrepresenting in any manner the odds of receiving any prize or gifts or the rules, terms, or conditions of participation in the promotional program.

#### **18-14-505. Enforcement.**

Whenever the agency determines from evidence available to it that a person is violating or failing to comply with the requirements of this subchapter, the agency may order the person to desist and refrain from such violations and may take enforcement action under the provisions of subchapter 2 of this chapter.

### **SUBCHAPTER 6 - FINANCING**

#### **SECTION.**

18-14-601. Financing of time-share programs.

18-14-602. Protection of purchasers from subsequent underlying lien.

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#### **18-14-601. Financing of time-share programs.**

In the financing of a time-share program, the developer shall retain financial records of the schedule of payments required to be made and the payments made to any person or entity which is the lien holder of any underlying blanket mortgage, deed of trust, contract of sale, or other lien or encumbrance. Any transfer of the developer's interest in the time-share program to any third person shall be subject to the obligations of the developer.

#### **18-14-602. Protection of purchasers from subsequent underlying lien.**

The developer whose project is subjected to an underlying blanket lien or encumbrance subsequent to the transfer of a time-share interval shall protect nondefaulting purchasers from foreclosure by the lien holder by obtaining from the lien holder a nondisturbance clause, subordination agreement, or partial release of the lien as to those time-share intervals sold or shall provide a surety bond or insurance against the lien from a company acceptable to the agency.

### **SUBCHAPTER 7 – CAMPING SITES**

#### **SECTION.**

18-14-701. Definition.

18-14-702. Buyer's right to cancel.

18-14-703. Seller to provide notice of cancellation — Form.

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**18-14-701. Definition.**

As used in this subchapter; “time-share program” shall have the same meaning as provided in § 18-14-102.

**18-14-702. Buyer’s right to cancel.**

(a) In addition to any other right to revoke an offer, the buyer has the absolute right to cancel a contract or offer for the purchase of a camping site under a time-share program until midnight of the fifth calendar day, excluding Sundays and holidays as declared in § 1-5-101, after the day on which the buyer signs an agreement.

(b) Cancellation occurs when the buyer returns to the seller the notice of cancellation, the notice having been provided for the buyer by the seller.

(c) To further protect the consumer, it is suggested that the notice of cancellation be sent by registered mail.

**18-14-703. Seller to provide notice of cancellation — Form.**

(a) The seller of a camping site under a time-share program must furnish to the buyer at the time the buyer signs the sales contract or otherwise agrees to buy the campsite a complete form in duplicate captioned “NOTICE OF CANCELLATION”, which shall be attached to the contract or receipt and easily detachable and which shall contain in 10-point bold-face type, the following information and statements:

“NOTICE OF CANCELLATION.....  
Enter date of transaction  
You are entitled to cancel the agreement or offer referred to above at any time prior to midnight of the fifth day, excluding Sundays and holidays, after the day you signed the agreement or offer. In the event you cancel, the seller must return to you (1) any payments made; (2) any goods or other property (or a sum equal to the amount of the indebtedness, given by you to the seller pursuant to or in connection with the agreement or offer.  
TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE TO.....  
.....AT.....  
(Name of seller) (Address of seller’s place of business)  
NOT LATER THAN MIDNIGHT OF .....  
(Date)  
I HEREBY CANCEL THIS TRANSACTION.....  
(Date)  
.....  
(Buyer’s signature)”.

(b) If seller fails to give both oral and written notice of the buyer’s right to cancellation, the cooling-off period does not begin to run until actual notice is given.

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## **SECTION 1. COMMISSION MEETINGS; APPEARANCES; SUBPOENAS.**

### **1.1 Meetings of Commission.**

(a) Regular meetings of the Arkansas Real Estate Commission shall generally be held on the Monday immediately preceding the second Tuesday of each month, and will continue in session until its business is completed insofar as is possible; provided, however, that any regular meeting of the Commission may be set forward, postponed, canceled or adjourned to another day.

(b) Special meetings of the Commission may be called at any time by a majority of the Commission.

### **1.2 Place of regular meetings.**

All regular meetings of the Arkansas Real Estate Commission shall be held in the Commission's offices unless otherwise specified.

### **1.3 Appearance before Commission.**

Any person desiring to appear before the Commission at any of its regular meetings to take up any business within the jurisdiction of the Commission shall, at least fifteen (15) days prior to such meeting, file with the director a written request therefor, in which the nature and purpose of the appearance shall be clearly and concisely stated with sufficient details to fully apprise the Commission of the basis and extent of such business. Provided, however, that a person may not appear before the Commission in connection with any matter pending before the Commission for administrative adjudication except upon notice and opportunity for all parties to participate.

### **1.4 Director to prepare agenda.**

The director shall arrange the order of business of all meetings of the Commission and shall, at least ten (10) days prior thereto, notify all persons who are to appear before any such meeting the place and approximate time he or she is to appear before the Commission.

### **1.5 Director to fix salaries.**

The director shall fix the salaries of all employees of the Commission within budgetary limitations.

### **1.6 Subpoenas.**

(a) Requests for subpoenas shall be in writing. The person requesting the subpoena has the burden of obtaining and serving the subpoena.

(b) Service of subpoenas issued by the Commission shall be as provided by Rule 45(c) of the Arkansas Rules of Civil Procedure as that rule now exists or as it may be amended from time to time.

(c) The fees and mileage of officers serving subpoenas and of witnesses subpoenaed shall be as provided by Rule 45(d) of the Arkansas Rules of Civil Procedure.

## **SECTION 2. DIRECTOR DUTIES, AUTHORITY AND RESPONSIBILITY.**

### **2.1 Director duties, authority and responsibility.**

(a) The director is the chief executive and administrative officer of the Commission, and, as such, is authorized to do all things necessary and convenient to carry into effect the Arkansas Real Estate License Law and Arkansas Time-Share Law and the regulations promulgated thereunder, subject to the general supervision of the Commission.

(b) All duties, authority and powers given the Commission by law, except rulemaking and adjudicative powers, are hereby delegated to the director, or the director's designee, who shall utilize and perform such duties, powers and authority under the general supervision of the Commission.

## **SECTION 3. FEES; BAD CHECKS; REFUNDS.**

### **3.1 Fees.**

The following fees are established at the amounts indicated:

- a) Application fee - \$50.00
- b) Original broker license fee - \$70.00
- c) Annual renewal broker license fee - \$70.00
- d) Original salesperson license fee - \$50.00
- e) Annual renewal salesperson license fee - \$50.00
- f) Broker expired license fee - \$100.00
- g) Salesperson expired license fee - \$70.00
- h) License reissuance fee - \$30.00
- i) Initial duplicate license fee - \$30.00
- j) Annual renewal duplicate license fee - \$30.00
- k) Transfer fee - \$30.00
- l) Appeal filing fee - \$100.00
- m) Recovery fund fee - \$25.00
- n) Examination fee shall be the actual cost charged by the testing service and shall be paid directly to the testing service.

### **3.2 Dishonored checks.**

(a) Any applicant or licensee who shall submit in payment of any fee a check or bank draft which is not honored by the bank shall not be eligible to receive a license from the Commission until such time as such check or bank draft is paid.

(b) The Commission shall charge a fee not to exceed \$25.00 for a dishonored check or bank draft and shall also require such check or bank draft to be made good immediately by the maker. If such person

shall be a real estate salesperson, associate broker or executive broker, and shall fail to make such check or bank draft good, the Commission may require payment of such funds from the principal broker with whom such person is licensed.

### **3.3 Overpayment of fees.**

In the event that an applicant or licensee shall submit to the Commission any funds which are in excess of the funds required by the Commission pursuant to Commission rule or state law, the Commission shall refund such overpayment according to the following schedule: If the overpayment is at least \$0.01, and not more than \$10.00, no refund shall be made; if the overpayment shall exceed \$10.00, the Commission shall first deduct \$10.00 for processing the refund check, and shall refund the remainder of the overpayment.

## **SECTION 4. APPLICATION AND EXAMINATION; EDUCATION AND EXPERIENCE REQUIREMENTS.**

### **4.1 Applications; education; experience.**

Applicants for original licensure as a broker or salesperson must apply on forms provided by the Commission, pay the application fee established by these regulations, and meet the following requirements:

(a) Broker applicants must provide proof of the following:

(1) Attainment of the age of majority, which proof may consist of a birth certificate or copy thereof, driver's license, or other document or proof of age which is satisfactory to the Commission;

(2) Successful completion within thirty six (36) months immediately preceding the date of the application of a course or courses of instruction in real estate principles, license law, and Commission regulations by actual classroom attendance or completion of approved distance education courses for not less than sixty (60) classroom hours. Applicants who are retaking only one part of the examination pursuant to Regulation 4.2 (c), shall remain subject to the requirement which was in effect at the time the applicant passed the other part of the examination. Proof of completion of such education requirement shall consist of the original certificate(s), or certified copies thereof, from the school or organization or other documentation satisfactory to the Commission;

(3)(A) Service by the applicant of an active bona fide apprenticeship by holding a valid real estate salesperson's license issued by the Commission, or by holding a valid real estate salesperson's license or broker's license issued by the appropriate licensing agency of another state, for a period of not less than twenty four (24) months within the previous forty eight (48) month period immediately preceding the date of application, which proof may consist of the official license records of the Commission or certified copies of licensure records of the appropriate licensing agency of another state, plus such other documentation as the Commission deems satisfactory to demonstrate that the applicant has gained experience in the real estate business equal to that which would be gained by a person engaged in the real estate business on

a full time basis during a minimum two year period of time; Listings, sales or other licensed activities may be considered by the commission in determining whether the applicant meets this qualification; Consideration shall be given to the broker applicant's local real estate market and/or specialized area of real estate practice. Any person whose application for broker license is denied by the executive director may appeal such denial to the Commission provided the request is in writing and received in the office of the Commission not later than sixty (60) days following the date of denial by the executive director.

(B) However, pursuant to Section § 17-42-303 (b)(2) the Commission may waive such experience requirement for a real estate broker applicant who has held an active real estate broker's license for a period of not less than eighteen (18) months or who has experience acceptable to the commission in a field considered real estate related for a period of not less than twenty-four months within the previous forty-eight-month period immediately preceding the date of application. Each request for such waiver shall be in writing and shall include such proof as necessary to establish the applicant's eligibility for the waiver. Such proof may consist of the official license records of the Commission, certified copies of license records of the appropriate licensing agency of another state, or such other documentation as the Commission deems satisfactory;

(4) The applicant's affidavit that he/she has no record of unprofessional conduct;

(5) Any other information or documents related to professional licenses held by the applicant; formal disciplinary actions by regulatory agencies; or, pending lawsuits filed or judgments entered against the applicant for fraud, deceit, dishonesty, misrepresentation, or conversion of property including money belonging to another.

(b) Salesperson applicants must provide proof of the following:

(1) Attainment of the age of majority, which proof may consist of a birth certificate or copy thereof, driver's license, or other document or proof of age which is satisfactory to the Commission;

(2) Successful completion of a course or courses of instruction in real estate by actual classroom attendance or completion of approved correspondence courses of not less than sixty (60) classroom hours, of which at least thirty (30) hours must be in the basic principles of real estate; which proof shall consist of the original certificate(s), or certified copies thereof, from the school or other organization or other documentation satisfactory to the Commission;

(3) The applicant's affidavit that he/she has no record of unprofessional conduct;

(4) Any other information or documents related to professional licenses held by the applicant; formal disciplinary actions by regulatory agencies; or, pending lawsuits filed or judgments entered against the applicant for fraud, deceit, dishonesty, misrepresentation, or conversion of property including money belonging to another.

(c) (1) Effective January 1, 2006, the Commission may require each original applicant for a salesperson or broker license, including nonresident applicants applying pursuant to Arkansas Code Ann. § 17-42-305, using forms furnished by and pursuant to instructions provided by the Commission to apply for a state and federal criminal background check to be conducted by the Identification Bureau of the Department of Arkansas State Police and Federal Bureau of Investigation pursuant to Arkansas Code Ann. § 17-42-315.

(2) "Criminal background check" means a state and nation-wide criminal records check conducted by the Arkansas State Police and Federal Bureau of Investigation, including the taking of fingerprints.

(3) Each such applicant shall submit, prior to or with the Application for Real Estate Examination, the form furnished by the Commission authorizing the release of the applicant's criminal background check report to the Commission and shall pay any applicable fees, associated with the State and Federal criminal background checks, pursuant to written instructions provided by the Commission. The release form shall authorize the Identification Bureau of the Arkansas State Police to forward all criminal history information obtained concerning the applicant in regard to any offense referred to in Arkansas Code Ann. § 17-42-315 to the Commission.

(4) The criminal background check shall be completed within six months immediately preceding the date the Application for Real Estate License Examination is received in the Commission's office, and if not, the application shall be returned to the applicant.

(5) Upon request and proof of identification satisfactory to the Commission the Commission may make the report of any criminal information available to the applicant who is the subject of the report and shall provide the applicant a reasonable time to challenge the accuracy or completeness of the information therein, through the State Identification Bureau pursuant to Arkansas Code Ann. § 12-12-211 and Arkansas Crime Information Center Regulation 7(F).

(6) Should an applicant challenge his/her conviction report, he/she shall notify the Commission in writing. After receipt of such notice, the Commission shall not determine whether an applicant is qualified for the license applied for until the applicant has had reasonable opportunity to challenge said conviction report and shall not process the application until the challenge of said report is resolved by the State Identification Bureau and/or Arkansas Crime Information Center. The applicant shall notify the Identification Bureau to forward to the Commission changes in the applicant's report as a result of any such challenge.

(7) Except as provided in Arkansas Code Ann. § 17-42-315 (g), no person shall receive or hold a license issued by the Commission if the person has been convicted by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court of an offense identified in Ark. Code Ann. § 17-42-315 (f).

(8) After a hearing the Commission may waive a conviction identified in the preceding paragraph, upon application of the applicant, pursuant to the provisions of Ark. Code Ann. § 17-42-315 (g).

(d) All classroom hours required by Regulation 4.1(a) and (b) shall be conducted by:

- (1) An accredited postsecondary school wherever situated; or
- (2) A school or organization licensed by the State Board of Private Career Education.
- (3) A school or organization approved by a real estate licensing jurisdiction deemed equivalent by the Commission.

(e) The course or courses of instruction requirements of Regulation 4.1(a) and (b) may be satisfied by successful completion of such distance education courses as the Commission may by regulation require, giving due consideration to the number of hours necessary to provide instruction in basic competencies required for a broker's license or salesperson's license, as the case may be, and to the advice and recommendations of the State Board of Private Career Education.

(f) Both broker and salesperson applicants shall also answer all questions and provide all information requested on the examination application, and shall provide such other information or documentation as the Commission may require.

(g) Applicants that have provided all requirements of Regulation 4.1, may sit for the real estate examination, provided that a state and federal criminal background check, as required by ACA § 17-42-315, has been sent to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check. However no license shall be issued upon successful completion of the examination, until receipt and approval by the Commission of the state and federal criminal back ground check.

(h) All applications expire one (1) year after the date of the application or upon successful completion of the examination, whichever first occurs. Provided, however that the application of an applicant who takes and passes either part of the examination within one (1) year from the date of his application shall not expire until the six (6) months allowed for retaking the failed portion pursuant to Regulation 4.2(c) has expired.

(i) Application fees are non-refundable.

#### **4.2 Examinations; passing scores; reexaminations.**

Applicants for original licensure as a broker or salesperson must pass a written examination to demonstrate competency to act as a real estate licensee in such a way as to safeguard the interests of the public. The examination shall consist of a general part and an Arkansas law part.

(a) For broker applicants a minimum score of seventy (70) on the general part and seventy-five (75) on the Arkansas law part are required. A person who is licensed as a broker may not apply and may not take the examination. A person who has passed the Arkansas real estate broker's examination but who is not licensed as a broker may apply. However, in addition to meeting other requirements, such a person must furnish an affidavit stating the reason for applying. Such a person may take the examination only with written permission from the director or the director's designee.

(b) For salesperson applicants a minimum score of seventy (70) on the general part and seventy (70) on the Arkansas law part are required. A person who is licensed as a salesperson or as a broker may not apply and may not take the examination. A person who has passed the Arkansas real estate salesperson's examination but who is not licensed as a salesperson may apply. However, in addition to meeting other requirements, such a person must furnish an affidavit stating the reason for applying. Such a person may take the examination only with written permission from the director or the director's designee.

(c) An applicant who takes the examination in Arkansas and passes either the Arkansas law part or the general part but fails the other need not again take the part passed if within six (6) months of such initial examination the applicant retakes and passes the part failed. Otherwise, the applicant must retake the entire examination, and must also make new application if more than one (1) year has elapsed since the date of the original application.

(d) (1) An applicant who meets all three (3) of the following requirements will be required to take only the Arkansas law part of the examination:

(i) Has passed a uniform, general, or multi-state part of an examination for a real estate license in another state in which the examination is determined by the Commission to meet generally acceptable standards of real estate testing, and

(ii) The other state requires a minimum passing grade no lower than that required for the general part of the Arkansas examination, and

(iii) The applicant at the time of taking the Arkansas examination is licensed in the other state.

(2) If an applicant meets the first two (2) requirements above, but not the third, the applicant will be required to take only the Arkansas law part of the examination provided that the applicant passed the uniform, general, or multi-state part of the examination in the other state within six (6) months prior to the month in which the applicant takes and passes the Arkansas law part.



(3) An applicant seeking licensure under this Regulation 4.2(d) must furnish such documentation of entitlement thereto as the Commission may require.

#### **4.3 Examinations; application procedure; time requirements.**

(a) The Commission shall announce from time to time the dates and locations of examinations. All applications should be received in the Commission office at least ten (10) days before the examination for which the applicant desires to sit. However, regardless of the date on which the application is received by the Commission, it shall be processed as expeditiously as possible under the circumstances. Once the application is processed, the Commission will send to the applicant a "Certificate of Examination Eligibility." The certificate will include instructions for making examination reservations and will be required for admission at the test center.

(b) An examination fee which shall equal the actual cost of the examination as established by the testing service engaged by the Commission will be collected at the test center. The examination fee shall be made payable to the testing service unless the applicant is otherwise notified by the Commission. The examination fee shall be charged each time an applicant applies to take an examination and is non-refundable.

(c) An applicant shall receive notice upon passing the examination. Each successful broker and salesperson applicant shall pay to the Commission, within ninety (90) days from the date of the successful completion of the examination, the appropriate license fee and recovery fund fee. However, the payment of the recovery fund fee shall be waived for any successful applicant who has previously paid such fee. If a successful applicant shall fail to pay the prescribed fee(s) within ninety (90) days following the date of the examination, the examination results shall be null and void, and the applicant shall be required to make new application and retake the examination, as an original applicant. If the Federal criminal background check has not been received by the commission within ninety (90) days of the date of the examination, the date may be extended by the commission until receipt of the Federal criminal background check.

#### **4.4 No duplication of credit for educational courses.**

No educational courses or hours submitted as credit toward the prelicensing education requirement shall be used as credit for the continuing education requirements, and no educational courses or hours submitted for credit toward the continuing education requirements shall be used or counted to satisfy the pre-licensure educational requirements.

### **SECTION 5. NONRESIDENT LICENSURE.**

#### **5.1 Application.**

Upon receipt of an application for nonresident licensure under Section 11(a)(1)(B) of Act 690 of 1993 [A.C.A. §17-42-305(a)(1)(B)], the director shall determine whether the applicant's resident jurisdiction offers Arkansas licensees opportunities for licensure substantially comparable to those offered to that jurisdiction's licensees by Arkansas.

## **5.2 List of approved jurisdictions.**

The director may maintain and publish from time to time a list of jurisdictions which have been previously determined to offer Arkansas licensees opportunities for licensure substantially comparable to those offered to that jurisdiction's licensees by Arkansas. If an applicant's jurisdiction is not on the list the director may, upon request, investigate and determine whether it should be.

## **5.3 No hearing on denial.**

An applicant whose application for licensure under Section 11(a)(1)(B) of Act 690 of 1993 [A.C.A. §17-42-305(a)(1)(B)] is denied is not entitled to a hearing on such denial.

## **5.4 Written agreements with other jurisdictions.**

The director is authorized to enter into written agreements with licensing authorities of other jurisdictions to assure opportunities for nonresident licensure in those jurisdictions for Arkansas licensees.

# **SECTION 6. RENEWAL; INACTIVE STATUS; EXPIRED LICENSES.**

## **6.1 Renewal applications.**

Notice to renew licenses will be sent by mail about July 15 of each year to the firm at which the licensee is licensed or such other address as the Commission has on file for the licensee. Renewal applications accompanied by the required fee must be filed with the Commission no later than September 30. In order to be considered filed with the Commission by the deadline; the renewal applications must bear a U.S. Postal Service postmark of September 30, or be received in the Commission's office on or before September 30. If September 30 falls on a Saturday, Sunday or legal holiday, the Commission shall accept as meeting the filing deadline those renewal applications that bear a U.S. Postal Service postmark of the first business day thereafter, and those applications received in the Commission office on the first day the office is open to the public following such Saturday, Sunday or legal holiday. A renewal application filed after the deadline shall be treated as an application to renew an expired license.

## **6.2 Inactive status renewal.**

(a) Any licensee who does not wish to engage in the real estate business at the time of renewal may apply to renew as inactive.

(b) Any person who holds a license on inactive status shall notify the Commission in writing within seven (7) days of any change of name or address.

(c) During inactive status a licensee shall not practice as a real estate broker or salesperson in this state without first activating the license.

(d) An inactive license may be activated upon submitting proof of satisfactorily completing six (6) classroom hours or equivalent continuing education units or equivalent correspondence work of approved continuing education for each year renewed as inactive, not to exceed thirty (30) classroom hours, and such other information as the Commission may require, including payment of the required fee. Completion of the continuing education requirement will only satisfy the requirement for the license year in which activated and not for the following year.

(e) All continuing education hours required to activate a license must have been completed in the year in which the license is activated or the preceding calendar year.

### **6.3 Expired licenses.**

(a) If an application for the renewal of a license, either active or inactive, and/or the required renewal fee is not received prior to the renewal deadline, such license is deemed to have expired at the end of the renewal period.

(b) A person whose license has expired shall not practice as a real estate broker or salesperson in this state.

(c) Upon reapplication within three (3) years of the last calendar year in which the license was renewed, payment of the required fees, and submission of such additional information as the Commission may require, the license may be reinstated and placed on either active or inactive status for the current license year. However, no license will be issued as active until proof of satisfactory completion of the continuing education requirement as required by Regulation 6.2 is submitted.

(d) Upon successful reapplication all prior years identified as expired will be considered as if inactive for purposes of continuing education requirements.

(e) A former licensee who fails to apply for renewal of an expired license within the prescribed time period shall be regarded as an original applicant.

(f) For purposes of providing notice to and communication with any licensee who permits or has permitted his license to expire and who is the subject of a pending complaint, investigation or hearing pursuant to A. C. A. § 17-42-312, said licensee shall during any such pending complaint, investigation or hearing notify the Commission in writing within seven (7) days of any change of name or address.

## **SECTION 7. FIRM NAME; OFFICES; SIGNS; TRANSFERS; CHANGE OF ADDRESS.**

### **7.1 Firm name approval.**

The Commission shall issue no principal broker's license where the proposed name of the firm is confusingly similar to the name of another firm, is misleading, or would in any way be confusing to the public. It shall be the duty of the principal broker to inquire of the Commission concerning the acceptability of the proposed firm name.

## **7.2 Temporary license.**

No person shall act as a licensee in Arkansas until such person has received from the Commission a current valid license and pocket card stating the name of the firm with which the licensee is affiliated. However, a temporary interim license may be issued pending issuance of the permanent license and pocket card, which temporary interim license shall be valid for a period of not more than thirty (30) days.

## **7.3 Place of business; sign.**

(a) A principal broker shall maintain a place of business and shall display at such place of business a permanently attached sign bearing the name under which the principal broker conducts his/her business, and the words "real estate," "realty," "REALTOR®," "REALTIST" or other words approved by the Commission which clearly indicate to the public the principal broker is engaged in the real estate business. Photographs of the sign and of the front or other part of the building where the sign is displayed shall be furnished to the Commission. A principal broker must display his/her broker's license and the licenses of any executive broker, associate broker or salesperson at the place of business.

(b) The Commission shall accept no sign as meeting this requirement until and unless such sign is permanently attached and clearly visible to the public and displayed in such a manner as to clearly indicate to the public that the principal broker is engaged in the real estate business.

(c) If a principal broker shall establish an office within an office building, the principal broker shall furnish (1) a photograph of the office building directory showing the real estate firm's name, and also (2) a photograph of the firm's office entrance bearing the name of the firm, unless either is nonexistent, in which case the other shall be furnished.

(d) If a principal broker shall move or change any sign of which a photograph has been filed with the Commission, the principal broker shall notify the Commission office immediately in writing of the new location or change and furnish a photograph of the new sign. If the principal broker's business location shall also change, the broker shall comply with Section 15 of Act 690 of 1993 [A.C.A. §17-42-309 and §17-42-310] and applicable regulations.

(e) The principal broker shall furnish both the street address or physical location and the mailing address for the business.

(Amended 8/31/2007)

## **7.4 Branch office.**

(a) All branch offices shall have and display a real estate sign and a duplicate principal broker's license. Principal Brokers who wish to open a branch office shall furnish the Commission a photograph of the branch office sign as previously approved by the Commission bearing the name of the company. If licensees are to be licensed at that branch office, an executive broker shall be designated by the principal broker, to be in charge of the branch office. Such executive broker shall be responsible for any licensee licensed with such branch office pursuant to a written designation of responsibility filed by the principal broker with the Commission on a form provided by the Commission consistent with Regulation 10.4(a)(1), and shall not be gainfully employed or engaged in any non-real estate related field pursuant to Regulation 10.4(e).

(b) If such branch office, maintains its own trust account or separate escrow agent the principal broker shall be responsible and accountable for any and all trust funds received by the branch office and any and all deposits to or disbursements from the trust account.

(1-2010)

(c) A principal broker of a licensee that is licensed at the principal broker's place of business or any branch office thereof may authorize that licensee to be issued a duplicate license at the principal broker's place of business or at any branch office where the principal broker holds a duplicate license. Provided, however, a duplicate license shall not be issued at a branch office unless an executive broker has been designated to be in charge of the branch office.  
(Amended 1/1/2010)

## **7.5 Termination or transfer.**

(a) Within seven (7) days after the employment or association of a licensee with a principal broker ends, such principal broker shall notify the Commission of such termination and return to the Commission the license and pocket card of the terminated licensee. Such notification shall automatically inactivate the license. Immediately upon termination, the terminated licensee shall deliver to the principal broker his/her pocket card.

(b) The license of a licensee terminated under Regulation 7.5(a) may be transferred to another firm, after the license and pocket card have been returned to the Commission, by the licensee's filing with the Commission a transfer application signed by the new principal broker. Such transfer application must be accompanied by (1) a statement that the licensee is not taking any listings, management contracts, appraisals, lease agreements, or copies of any such documents, or any other pertinent information belonging to the former principal broker or firm, and (2) a transfer fee. At the time the transfer application and the accompanying items are filed, a temporary interim license may be issued.

(c) If an actively licensed broker or salesperson does not wish to continue to engage in the real estate business, such broker or salesperson shall return any license and pocket card in his/her possession to his/her principal broker who shall then return these items to the Commission for inactive status. A broker who closes his/her firm shall remove all signs reflecting the company name and shall return all licenses and pocket cards issued to the principal broker to the Commission office for inactive status. If a real estate firm shall close its office, any real estate salesperson licensed with such principal broker shall be entitled to transfer to a new principal broker upon compliance with the appropriate provisions of the Arkansas Real Estate License Law and Commission regulations.

(d) If the principal broker is deceased, unavailable, or for any reason unwilling or unable to act, then the licensee has the responsibility to notify the Commission in writing of the termination or transfer and of returning the pocket card and license.

(e) A principal broker of a real estate firm or designated executive broker of a branch office, who has no ownership interest in the firm, who is terminated by the firm's owner or designee, shall notify the Commission in writing immediately upon termination. The written notification must include a statement that the principal broker or branch office designated executive broker has been terminated by the owner of the firm or designee, and that the terminated principal broker or executive broker is relinquishing his/her responsibilities as principal broker or branch office designated broker effective the termination date. The respective broker license and pocket card must be returned with the written notification.

If the real estate firm or branch office is not closing, and another principal broker or branch office designated broker is not immediately available to assume responsibilities of the real estate firm or branch office, the owner of the real estate firm may request in writing that the Commission permit the real estate firm to continue operating pursuant to Regulation 7.7.

If the owner of the real estate firm closes the firm and ceases to do business and maintain an office, the principal broker shall notify the commission in writing of said closing, return all licenses and pocket cards to the commission and comply with Regulation 10.7(c).

A principal broker or branch office designated executive broker who has been terminated by the real estate firm owner or designee of a real estate firm that is not closing, and who does not notify the commission in writing, relinquish responsibilities as principal broker or designated branch office executive broker, and return his/her broker license and pocket card to the commission, shall be presumed to be in violation of A.C.A. § 17-42-311 and subject to appropriate sanctions.

#### **7.6 Change of address; lost license or pocket card.**

(a) Upon any change of name, address or place of business, or upon the loss or misplacement of a license or pocket card, the licensee shall promptly notify the Commission of such change or loss on a form prescribed by the Commission. Upon receipt of such notice and other information as may be necessary to issue a new license, the Commission shall issue a new license for the unexpired period of the license upon the payment of the license reissuance fee.

(b) All licensees, both active and inactive, shall at all times keep the Commission informed in writing of their personal residence address, physical business address and mailing address.

#### **7.7 Death of principal broker; closing of business.**

Upon the death, resignation, termination or incapacity of a principal broker or the closing of a real estate firm, the Commission may in its discretion, based upon the merits and circumstances of each case, permit the real estate firm to continue operating for a period of time under the direction of a person approved by the Commission and subject to time limitations and other conditions imposed by the Commission. Unless otherwise determined by the Executive Director, the time of such approval is to be effective at the time of death, resignation, termination or incapacity of the principal broker.

### **SECTION 8. AGENCY DISCLOSURE.**

#### **8.1 Seller or lessor agents.**

(a) (1) In any real estate transaction in which a licensee is acting solely as agent for a seller or lessor, the licensee shall disclose to a potential buyer or lessee, or to the buyer's or lessee's licensed agent, the licensee's agency relationship with the seller or lessor. Such disclosure shall be made in a timely manner under the particular circumstances so as to avoid to the extent possible eliciting or receiving from the prospective buyer or lessee information which would reasonably be expected to remain confidential and not disclosed to the seller or lessor, such as, for example, information concerning the real estate needs or motivations, negotiating strategies or tactics, or the financial situation of the potential buyer or lessee.

(2) When the disclosure is made to the licensed agent of the buyer or lessee, it is that licensee's duty to convey the disclosure to the buyer or lessee in a timely manner.

(b) In all cases, disclosure shall be in writing, but may initially be made orally and reduced to writing at a convenient time subject to the requirements of Regulation 8.1(c). Evidence of the disclosure shall be maintained by the licensee.

(c) In all cases, however, such disclosure must be made before the buyer or lessee signs any document related to the transaction, such as an offer or lease or rental agreement.

## **8.2 Buyer or lessee agents.**

(a) (1) In any real estate transaction in which a licensee is acting solely as agent for a buyer or lessee, the licensee shall disclose to a potential seller or lessor or to the seller's or lessor's licensed agent, the licensee's agency relationship with the buyer or lessee. Such disclosure shall be made at the first contact with the seller, lessor, or the agent of the seller or lessor.

(2) When the disclosure is made to the licensed agent of the seller or lessor, it is that licensee's duty to convey the disclosure to the seller or lessor in a timely manner.

(b) In all cases, disclosure shall be in writing, but may initially be made orally and reduced to writing at a convenient time subject to the requirements of Regulation 8.2(c). Evidence of the disclosure shall be maintained by the licensee.

(c) In all cases, however, such disclosure must be made before the seller or lessor signs any document related to the transaction, such as an offer or lease or rental agreement.

## **8.3 Dual agency.**

(a) A licensee who represents both the seller and buyer in a real estate sale transaction, or both the lessor and tenant in a real estate lease or rental transaction shall make disclosure in the time and manner required by Regulations 8.1 and 8.2 and all parties to the transaction must have given their written consent to such dual representation prior to or at the time of execution of the agency contract, listing contract, property management contract, lease, rental agreement, offer and acceptance contract or other real estate contract.

(b) Notwithstanding Regulation 8.3(a), a licensee shall not accept a commission, rebate, profit, payment, compensation or other valuable consideration in connection with a real estate transaction or real estate activity from any person or entity except the licensed principal broker under whom the licensee is licensed.

## **8.4 Failure to disclose agency relationship.**

A licensee who fails to disclose the licensee's agency relationship in the time and manner required by these regulations shall be subject to sanctions under Section 17 of Act 690 of 1993 [A.C.A. §17-42-312].

## **8.5 Fidelity and honest dealing.**

(a) In accepting employment as an agent, a licensee pledges to protect and promote the interests of the client or clients. This obligation of absolute fidelity to the interest of the client or clients is primary, but does not relieve a licensee from the equally binding obligation of dealing honestly with all parties to the transaction.

(b) A licensee shall not offer or advertise property without authority and in any offering or advertisement the price quoted must not be other than that agreed upon with the owners as the offering price.

(c) When acting as agent in the sale or management of property, a licensee shall not accept any commission, rebate, profit, payment, compensation or other valuable consideration from any source in connection with the property without full written disclosure to the party represented by the licensee.

(d) A licensee shall not accept compensation from more than one party without full written disclosure to all parties to the transaction.

## **SECTION 9. COMPLAINTS; INVESTIGATIONS; HEARINGS.**

### **9.1 Complaints.**

Complaints against licensees must be in writing, signed by the complainant under oath, dated and filed with the director.

### **9.2 Answers.**

(a) If the director determines that a complaint establishes a prima facie case of a violation of the Arkansas Real Estate License Law or Commission regulations, the director shall send a copy of such complaint to the licensee complained against along with instructions concerning the filing of an answer. The director may also send a copy of the complaint to the principal broker of the licensee complained against.

(b) Within twenty (20) days after service of the complaint on the licensee, such licensee shall file a written answer with the director. The answer shall be dated and shall be signed by the licensee under oath. The time for answering may be extended at the discretion of the director or the director's designee.

### **9.3 Investigation.**

The director may conduct such investigation as is deemed warranted either before or after the answer is received, and in conducting such investigation, may take statements from any person thought to have any knowledge of the facts or allegations pertaining to the complaint and may also obtain and review any documents which may relate to the complaint. The director may utilize the subpoena powers of the Commission in connection with the investigation.

### **9.4 Disposition of complaints; appeals from dismissal.**

(a) A complaint which, together with the answer, if any, and the results of any investigation conducted by the director, establishes a prima facie violation of the Arkansas Real Estate License Law or Commission regulations shall be presented to and reasonably disposed of by the Commission. Likewise, any investigation initiated and conducted by the director without a formal complaint which results in a



determination by the director that there exists a prima facie violation of the Arkansas Real Estate License Law or Commission regulations shall also be presented to and reasonably disposed of by the Commission.

(b) (1) Any person whose complaint is dismissed by the director without a hearing may appeal such dismissal to the Commission in the following manner:

(i) The request for appeal must be in writing and received in the offices of the Commission not later than sixty (60) days following the date of dismissal by the director; and

(ii) The request for appeal must be accompanied by the appeal filing fee; and

(iii) The Commission staff shall determine the cost of preparing the record for the Commission's review, which cost shall be paid by the appellant within thirty (30) days after notification of the amount; otherwise the appeal will be dismissed.

(2) Upon submission of the appeal, the Commission shall review the written record and either uphold or overrule the director's decision. The parties may submit written arguments but no new evidence. Any newly discovered evidence must first be presented to the director. If the decision is overruled, the Commission may either order a hearing or request further investigation or documentation of the complaint. If the Commission review results in a hearing being ordered on the complaint, both the filing fee and the cost of preparing the record shall be refunded to the appellant.

(3) Provided, however, that a person may not appear before the Commission in connection with any matter pending before the Commission for administrative adjudication except upon notice and opportunity for all parties to participate.

## **9.5 Hearings.**

(a) Hearings shall be scheduled for a day certain by the director who shall, at least thirty (30) days prior to such hearing date, send notice to all persons entitled to notice thereof of the place and approximate time of said hearing, a statement of the allegations and charges forming the basis for the hearing, and the provisions of the law or regulations thought to be involved therein. The Commission shall serve notice of said hearing by mailing same addressed to the licensee at his or her address last known to the Commission or may, in its discretion, serve the licensee by personal delivery of said notice.

(b) Prior to the hearing, the respondent licensee involved in the hearing may, by written petition, signed and dated, invoke the aid of the Commission in the procurement of any witness or document the licensee may desire to be present at such hearing, provided however, that such petition must be filed with the director at least ten (10) days prior to the hearing date.

(c) All motions concerning or related to the hearing must be in writing and filed at the Commission office no later than ten (10) days before the scheduled hearing date, along with a certificate of the person filing the motion that copies of the motion have been served on the attorney of the other parties who are represented by attorneys, or on the parties themselves if they are not represented by attorneys. Motion for continuance shall be decided by the director. All other motions shall be decided by the Commission or by the hearing officer by delegation of such responsibility by the Commission. Upon delegation and authorization from the Commission, the hearing officer may also conduct pre-hearing conferences.

## **9.6 Hearing procedure.**

(a) At the hearing, the Commissioners shall hear and decide the ultimate issues of both fact and law.

(b) The Commission's hearing officer shall preside over the hearing and regulate procedural aspects of the hearing, including ruling on admissibility of evidence and objections. The hearing officer shall advise the Commission on questions of law.

(c) All persons appearing before the Commission and giving testimony shall first be placed under oath. All testimony given shall be recorded and shall be a part of the record in the case.

(d) At any hearing both the respondent licensee and complainant may be present in the hearing room during the entire hearing and the respondent licensee shall have the right to cross-examine any witness and to examine any document or evidence submitted.

(e) The hearing shall begin with presentation of the case against the respondent licensee. Such presentation is ordinarily conducted by the Commission staff counsel. However, upon request, and at the discretion of the Commission, counsel for the complainant may be permitted to participate. At the conclusion of such presentation, the respondent licensee may present evidence in defense of the charges, following which rebuttal testimony and evidence may be offered. Closing arguments may be called for or dispensed with at the discretion of the Commission.

(f) The Commission may receive into evidence such affidavits, depositions, certified copies of documents, photocopies of official records and other exhibits as it deems appropriate, whether or not such documents are admissible under formal rules of evidence, together with such other evidence as may be admissible by law. The Commission shall give to such evidence such weight as the Commission shall determine appropriate under the circumstances.

(g) After presentation of all evidence the Commission shall deliberate on the issues and either announce its decision or take the matter under advisement for later decision.

(h) Upon reaching a decision, the Commission shall enter its findings of fact and conclusions of law, and an appropriate order shall be prepared and served on the parties.

(i) Once the decision is made, any motion for reconsideration must be filed within fifteen (15) days from the date the decision is first announced, whether orally or in writing, but the filing and pendency of such motion will not delay the appeal time dead-lines of the Arkansas Administrative Procedure Act.

## **9.7 Service.**

Service of any notice, order or other document or instrument upon any person shall be complete upon mailing to such person, postage prepaid, in a sealed envelope via the United States Postal Service.

## **9.8 Attorneys.**

An attorney who has entered an appearance in any cause before the Commission shall not withdraw except by leave of the Commission after notice served upon the attorney's client, counsel for the other parties and counsel for the Commission staff.

## **SECTION 10. BROKER RESPONSIBILITIES; ETHICAL REQUIREMENTS; TRUST FUNDS AND ACCOUNTS; LISTING AND OFFER AND ACCEPTANCE AGREEMENTS; CRIMINAL CONVICTIONS.**

### **10.1 Dealing independently of principal broker.**

(a) If a principal broker or executive broker learns a salesperson, associate broker or executive broker licensed under such principal broker or executive broker has, without permission of the principal broker or executive broker, engaged in real estate activities independently or through some other broker, it is the duty of the principal broker or executive broker to immediately notify the Commission in writing and forward such licensee's license to the Commission.

(b) Any salesperson, associate broker or executive broker who engages in real estate activities independently or through some other broker without permission from the principal broker or executive broker shall be presumed to be in violation of A.C.A. § 17-42-311 and subject to appropriate sanctions.

### **10.2 Expiration date for agency agreements or contracts.**

A licensee shall put a specific determinable duration or a specific expiration date on all written agency agreements or contracts or any extensions thereof. (Examples: Listing and Buyer Representation Agreements or Contracts)

### **10.3 Membership in trade organization.**

A licensee shall not use terms such as REALTOR®, REALTIST or any other trade name or insignia of membership of any real estate organization of which the licensee is not a member.

### **10.4 Broker responsibilities; executive brokers; part-time brokers.**

(a) (1) A principal broker is generally responsible for all business conducted by the broker's firm and for all of the real estate activities of all of those licensed under or associated with the principal broker, unless the licensee conducted real estate business independently and without permission or authority from the principal broker. If the principal broker learns that a licensee is conducting business independently, that principal broker must comply with Commission Regulation 10.1(a). (Amended 1/1/2010)

(2) For each executive broker so designated, the principal broker must complete and file with the Commission an appropriate designation form signed by both the principal broker and the designated executive broker. The designation of an executive broker is effective when filed with the Commission.

(3) Designation of one or more executive brokers does not absolve the principal broker of general responsibility for the conduct of all real estate business conducted by the principal broker's firm, and the principal broker is specifically responsible for the activities of all executive brokers.

(b) Principal brokers and executive brokers have the duty and responsibility to instruct those brokers and salespersons licensed under them with regard to the fundamentals of real estate practice and the ethics of the profession, and to keep them informed and abreast of all changes and developments pertaining to the Arkansas Real Estate License Law and Commission regulations. They shall also exercise strict supervision of the real estate activities of all those licensed under them and for whom they have supervisory responsibility.

(c) Whether or not a principal broker or executive broker has discharged these responsibilities for those licensed under him/her will depend on various factors and circumstances, including, without limitation, the following:

- (1) Frequency and manner of contact and communication;
- (2) Type and frequency of educational and instructional activities;
- (3) Method and frequency of monitoring real estate activities.

(d) (1) The preparation of instruments in connection with a real estate rental or sale and the closing of a sale by a licensee must be performed by or under the specific supervision of the principal broker.

(2) If the principal broker or designated executive broker or their assigned licensee, closes a transaction or selects a third party to close the transaction, it is the responsibility of the principal broker or designated executive broker to ensure that the real estate closing conducted on behalf of the principal broker's or designated executive broker's client(s) is conducted in accordance with the agreement of the buyer and seller. If the buyer and/or seller selects a third party to close the transaction the principal broker or designated executive broker, or their assigned licensee, must provide written closing instructions, on behalf of their client(s), to the third party closing the transaction, and review the client's closing statement, if reasonably available, to insure that the closing is conducted in accordance with the agreement of their client. It is strongly recommended that the principal broker, designated executive broker, or assigned licensee advise the client to contact the closing agent or title insurer about the availability of closing protection.

(e) No broker who is gainfully employed, or who is engaged in a non-real estate related field, may employ any licensee to work under the broker's license issued to such broker. A broker who is employed or who is engaged in any field other than real estate will be presumed to be gainfully employed or engaged in a non-real estate related field. This presumption may be overcome by proof that such employment or engagement is (1) in a real estate related field, and (2) conducted in the same office as the broker's real estate business.

## **10.5 Advertising.**

(a) A licensee may not advertise any property, including the licensee's own property, for sale or rent, or display a real estate sign without including in that advertisement or sign the name of the firm with whom that licensee is licensed.

(b) A principal broker and any persons licensed with said principal broker shall not advertise or otherwise conduct real estate brokerage business under any name other than the name in which the principal broker's license has been issued.

(c) In public advertising a principal broker shall be especially careful to present a true picture and should not permit licensees to use individual names or telephone numbers, unless the licensee's connection with the broker is obvious in the advertisement.

## **10.6 Knowledge of property.**

A licensee shall exert reasonable efforts to ascertain those facts which are material to the value or desirability of every property for which the licensee accepts the agency, so that in offering the property

the licensee will be informed about its condition and thus able to avoid intentional or negligent misrepresentation to the public concerning such property.

#### **10.7 Handling of funds; maintenance of records.**

(a) (1) A licensee shall immediately deliver to the principal broker any money or other consideration received in connection with a real estate transaction which belongs to others, such as escrow or trust funds, clients' moneys, earnest moneys, rents, advance fees, deposits, etc.

(2) A broker shall deposit all advance fees in the broker's trust account and shall disburse such funds only in accordance with the terms of a written agreement signed by the owner of the funds. If such written agreement is not received within a reasonable time after payment of the advance fee, the fee shall be refunded to the owner.

(3) "Advance fee" means any fee charged for services to be paid in advance of the rendering of such services, including, without limitation, any fee charged for listing, advertising, or offering for sale or lease any real property.

(b) (1) Each principal broker shall maintain complete records of all real estate business handled by that firm. Separate files for each real estate transaction conducted by the firm shall be maintained and shall contain signed copies of any of the following documents which were prepared in connection with the transaction: (i) listing contract, (ii) agency contract, (iii) offers, (iv) offer and acceptance contracts and (v) closing statements, along with any additional documents as may be necessary to make a complete record of each transaction.

(2) Each principal broker shall maintain complete records pertaining to property managed for others. Such records shall include all contracts, financial transactions, receipts, statements, repair estimates and other documents relating to management of the property.

(3) All records required by Regulation 10.7 shall be maintained by the principal broker for three (3) years or such time as may be required by law, whichever is greater, and shall be open to inspection by and made available to the investigative staff of the Commission at the firm's office or other location designated by the Commission. All records required by Regulation 10.7 may be maintained in an electronic form provided that a copy of the records can be produced as required by this Regulation.

(c) When a real estate firm ceases to do business and to maintain an office, the last principal broker remaining with the firm shall be responsible for all records of the firm, including the firm's real estate trust account and transaction records, and at the time the real estate firm's office is closed, the principal broker shall immediately notify the Commission of the address and phone number of the place where those records are being maintained. If for any reason that broker delivers custody or responsibility for those records to another person or firm, he/she shall immediately notify the Commission of such transfer and furnish the name, address and phone number of such person or firm.

#### **10.8 Trust funds; trust accounts.**

(a) "Trust funds" means and includes money or other things of value not belonging to the principal broker but which are received by the principal broker or any of the principal broker's licensees in connection with a real estate transaction or real estate activity, including, without

limitation, clients' moneys, earnest moneys, rents, advance fees, deposits, etc. For purposes of the Arkansas Real Estate License Law and Commission regulations, any funds deposited in a broker's trust account are presumed to be trust funds.

(b) Except as provided in Regulation 10.8(d), a principal broker shall not commingle trust funds with personal funds or other non-trust funds and shall not deposit or maintain trust funds in a personal account or any kind of business account except a specifically designated trust account.

(c) A principal broker who receives trust funds shall either maintain a separate trust account or shall have an escrow agent for all such trust funds. The principal broker of the firm shall be solely responsible and accountable for all trust funds received by the firm and all deposits to or disbursements from the trust account. The principal broker shall also be responsible and accountable for any funds delivered to an escrow agent selected by the principal broker, but shall not be responsible for funds delivered to an escrow agent selected by the parties. Except as authorized by Regulations 10.8(i) and 12.2, the trust account shall be non-interest bearing. The name on the account shall include either "trust" or "escrow" and must be located in an institution insured by either the FDIC or some other insuring agency of the federal government.

(d) A principal broker may maintain the broker's own funds in a designated trust account only when they are clearly identified as the broker's deposit and only for the following purposes:

(1) If the bank in which the account is maintained designates a specific minimum balance that must be maintained in order to keep the account open, the broker may maintain that amount in the account designated as the broker's funds.

(2) If the bank in which the account is maintained requires a service charge to be paid for the account, the broker may maintain a reasonable amount to cover that service charge in the account in the broker's name, provided, however, that such amount shall not exceed the total of six (6) months service charges.

(e) With regard to each separate trust account, the principal broker shall submit to the Commission in writing the following:

- (1) Name and number of the account.
- (2) Name and address of the bank.
- (3) Date the account was opened.

The principal broker shall keep the Commission informed at all times of the foregoing details of each separate trust account.

(f) In addition to the requirements of Regulation 10.8(e), the principal broker shall submit the same information in writing immediately upon any of the following events or occurrences:

- (1) Commission approval of real estate firm name.
- (2) Change of real estate firm name.
- (3) Designation of new principal broker.
- (4) The account is changed in any respect or closed.

(g) (1) No later than three (3) days following the execution of a real estate contract by both seller and buyer, all trust funds delivered to the principal broker, shall be either deposited in the trust account, delivered to an escrow agent, or deposited pursuant to a written agreement by the seller and buyer. All other funds delivered to the broker pending performance of any act shall be, no later than three (3) days, either deposited in the trust account, delivered to an escrow agent, or deposited pursuant to a written agreement by the seller and buyer. Should the third (3<sup>rd</sup>) day be a Saturday, Sunday, or legal holiday, then the third (3<sup>rd</sup>) day is extended to the next day which is not a Saturday, Sunday, or legal holiday. The broker shall maintain an accounting of all funds delivered to the broker and shall keep a signed receipt for any funds the broker delivers to an

escrow agent. The broker remains responsible for the funds if the broker selected the escrow agent, but not if the parties selected the escrow agent. A broker shall at all times keep detailed records of all funds coming into the broker's possession and all disbursements made by the broker.

(2) All trust account bank statements shall be reconciled in writing at least monthly and balanced to the total amount of trust funds deposited in the account which have not been disbursed. Copies of such reconciliations shall be kept by the broker for at least three (3) years or for such time as may be required by law, whichever is greater.

(3) All trust fund records, including bank reconciliations, shall be open to inspection by and made available to the investigative staff of the Commission at the firm's office or other location designated by the Commission.

(h) (1) All security deposits made under a rental or lease agreement shall be deposited in the principal broker's trust account, including those deposits made on property owned by any licensee licensed under the principal broker unless the licensee who owns the property has a written agreement with the tenant providing that the licensee may keep the security deposit in the licensee's separate account. A copy of any such agreement shall be furnished to the principal broker by the licensee.

(2) Provided, however, that a principal broker shall not be responsible for the failure of those licensed under such principal broker to comply with Regulation 10.8(h)(1) as long as the principal broker is in compliance with Regulation 10.4.

(i) Nothing in this Regulation 10.8 shall be deemed to prohibit a broker from maintaining certain funds or deposits in particular transactions in an interest-bearing account when required to do so by law or valid regulation of any governmental agency, nor shall it prohibit a broker from maintaining an interest-bearing account while participating in the Interest on Real Estate Brokers' Trust Account program authorized by Section 24 of Act 690 of 1993 [A.C.A. §17-42-601 et seq.] and Regulations 12.1 and 12.2.

## **10.9 Disbursement of trust funds.**

(a) A principal broker shall not disburse trust funds from the broker's designated trust account contrary to the terms of a contract for the sale or rental of real estate, or other contract pursuant to which the funds were received, and a principal broker shall not fail to disburse trust funds according to the terms of such contract.

(b) Except as otherwise authorized by Regulation 10.8(d), the balance of a principal broker's trust account shall at all times equal the total of the trust funds received for which the broker is accountable.

(c) A principal broker who disburses trust funds from a designated trust account under the following circumstances shall be deemed by the Commission to have fulfilled properly the broker's duty to account for and remit money which the broker is required to maintain and deposit in a designated trust account:

- (1) upon the rejection of an offer to buy, sell, rent, lease, exchange, or option real estate;
- (2) upon the withdrawal of an offer not yet accepted to buy, sell, rent, lease, exchange, or option real estate;
- (3) at the closing of the transaction;
- (4) upon securing a written agreement which is signed by all parties having an interest in the trust funds and is separate from the contract which directs the broker to hold the funds;
- (5) upon the filing of an interpleader action in a court of competent jurisdiction;

- (6) upon the order of a court of competent jurisdiction; or
- (7) upon a reasonable interpretation of the contract which directed the broker to deposit the funds.
- (d) When a broker makes a disbursement to which all parties to the contract have not expressly agreed in writing, the broker must immediately notify all parties in writing of the disbursement.

#### **10.10 Agreements to be written.**

(a) Except as provided in Regulation 10.10(b), a licensee, for the protection of the public and of all parties with whom the licensee deals, shall see that the exact agreement of the parties regarding real estate is in writing. A licensee shall also see that clients and other parties to the transaction with whom the licensee deals receive copies of such agreements signed by all parties. (Examples: Exclusive agency agreements or contracts, real estate contracts, closing statements, lease agreements, management agreements, financial obligations and commitments, etc.) It is strongly recommended that a licensee obtain written acknowledgment from the buyer and or seller that the buyer and or seller have received said signed copies.

(b) It is strongly recommended that non-exclusive agency agreements or contracts be in writing.

(c) In compliance with the Arkansas Supreme Court decision in the case of Pope County Bar Association, Inc. vs. Suggs, 624 S.W. 2d 828 (1981), real estate forms used by licensees in the regular course of business shall be approved by a licensed Arkansas attorney prior to use. The licensee shall be responsible for providing evidence of such approval by a licensed Arkansas attorney upon request of the Commission.

#### **10.11 Self dealing.**

Licensees shall not buy, sell, rent or lease property for themselves or for a corporation, partnership or association in which they have an interest without first making full disclosure to the buyer or seller, as the case may be, of the exact facts that they are licensed as a real estate broker or salesperson and are buying, renting or leasing the property for their own account or have an interest in the property which they are selling, renting or leasing. All such disclosures must be made in writing before the sales, rental or lease contract is entered into.

#### **10.12 Offers and acceptances.**

(a) All offers received on a specific property shall promptly be presented to the seller by the listing firm or other licensee designated by an authorized representative of the listing firm.

(b) Every offer received must be signed by the licensee who receives it and by that licensee's supervising broker. Every acceptance must be signed by the listing licensee and that licensee's supervising broker. (It is desirable for the supervising brokers of the selling licensee and listing licensee to review and sign each real estate contract before it is submitted to the seller, although that is not always possible. However, such supervising brokers shall review and sign the real estate contract as soon as possible after it is received, and, in all cases, prior to closing.)

#### **10.13 Listing agreements; signs.**



(a) If a firm holds an exclusive listing contract on a parcel of property, the selling licensee shall not contact the seller about showing the property or negotiating the sale without prior permission from the listing firm or other licensee designated by an authorized representative of the listing firm. Any offers received by the selling licensee shall be presented to the firm holding the exclusive listing contract not later than the close of the next business day after receipt of the offer. Likewise, all earnest moneys and deposits shall be forwarded to the listing firm for deposit in the listing firm's trust account. The listing firm or other licensee designated by an authorized representative of the listing firm shall then present the offer to the seller. The selling licensee may accompany the listing licensee with the latter's permission, but shall not contact the seller without prior permission from an authorized representative of the listing firm.

(b) A licensee shall not knowingly enter into an agency agreement or contract when there is reason to believe that there is an existing exclusive agency agreement or contract in force without first communicating with the other principal broker who holds such agreement or contract to confirm its existence. If there is an existing exclusive agency agreement or contract in force, the licensee shall not enter into another agency agreement or contract without first notifying the client in writing to consult with an attorney regarding the risk of being liable for two (2) separate commissions. (Examples: Exclusive Listing and Exclusive Buyer Representation Agreements or Contracts, Property Management Agreements)

(c) Signs offering or advertising a property may be on the property only during the existence of a listing agreement, unless otherwise authorized by the owner.

#### **10.14 Reporting violations.**

It is the duty of each licensee to report in writing to the Commission any information coming to the licensee's knowledge which is or may be (1) a violation of the Arkansas Real Estate License Law; or (2) a violation of the Commission regulations.

#### **10.15 Out of state property.**

(Repealed 8/31/2007)

#### **10.16 Criminal convictions and disciplinary actions.**

(a) A licensee who is convicted of or pleads guilty or nolo contendere to any crime other than a traffic violation shall make written report thereof to the Commission within thirty (30) days after the conviction or plea. The report shall include the date of the offense and of the conviction or plea, the name and address of the court, the specific crime for which convicted, or to which the plea is entered, the fine, penalty and/or other sanctions imposed, and copies of the charging document and judgment of conviction or other disposition, including probation or suspension of sentence. The report shall also include the licensee's explanation of the circumstances which led to the charge and conviction or plea, along with any other information which the licensee wishes to submit.

(b) A licensee who after the initiation of an investigation, hearing or other administrative action surrenders or who has a professional, vocational or occupational license, permit, certification or registration denied, revoked, suspended or canceled or who is subjected to any sanctions, including probation, involving such license, permit, certification or registration shall make written report thereof to the Commission within thirty (30) days after such action. The report shall include the date of the action, the name and address of the regulatory agency which has taken the action and copies of documents

pertaining thereto. The report shall also include the licensee's explanation of the circumstances which led to the action, along with any additional information the licensee wishes to submit.

(c) An applicant for a real estate license who has been convicted of or pleaded guilty or nolo contendere to any crime other than a traffic violation or who after the initiation of an investigation, hearing or other administrative action has surrendered or has had a professional, vocational or occupational license, permit, certification or registration denied, revoked, suspended or canceled or who has been subjected to any sanctions, including probation, involving such a license, permit, certification or registration shall furnish the written report referred to in Regulation 10.16 (a) and/or (b) to the Commission at the time the application is submitted if such action has already occurred, otherwise such report shall be made immediately after the action occurs.

### **10.17 Violation of law or regulation.**

A licensee who violates or fails to comply with any provision of the Arkansas Real Estate License Law or Commission regulations is subject to sanctions under Section 17 of Act 690 of 1993 [A.C.A. §17-42-312].

## **SECTION 11. CONTINUING EDUCATION.**

### **11.1 Requests for waiver or extension.**

Each request for a waiver of the continuing education requirement under A.C.A. § 17-42-501(b) or extension of time to complete post license education requirement, shall be in writing and shall be supported by clear and convincing evidence. The Commission shall acknowledge each such request and shall announce its decision in writing. If the waiver or extension is granted, the Commission may impose such terms and conditions as it deems appropriate.

### **11.2 Renewal of expired license.**

A person who applies to renew an expired license under Section 13 of Act 690 of 1993 [A.C.A. §17-42-307(b)] will be considered to be in the same status as a person holding an inactive license.

### **11.3 Approved courses and instructors.**

Only those courses and instructors which are approved by the State Board of Private Career Education or which are exempted from such approval by Section 23(4) of Act 690 of 1993 [A.C.A. §17-42-504] shall be accepted by the Commission for continuing education credit.

### **11.4 No duplication of pre-licensing and continuing education credit.**

No educational courses or hours submitted as credit toward the prelicensing education requirement shall be used as credit for the continuing education requirements, and no educational courses or hours

submitted for credit toward the continuing education requirements shall be used or counted to satisfy the pre-licensure educational requirements.

### **11.5 Post-license education requirements**

(a) Each salesperson and broker who is initially licensed in that capacity after January 1, 2002 will complete a post-license education course as provided herein.

(b) Salespersons shall complete an eighteen (18) classroom hour salesperson course.

(c) Brokers shall complete a thirty (30) classroom hour broker course. Provided, however, a broker who completed the salesperson post-license education course within thirty-six (36) months immediately preceding the date of his initial broker license, shall be credited with the eighteen (18) hour salesperson post-license course upon submission of proof of completion. Upon approval by the Commission said broker will only be required to complete twelve (12) hours in the broker course which are on subjects not covered in the salesperson course.

(d) All post-license education courses shall be conducted by either the Arkansas Real Estate Commission, a school or organization licensed by the State Board of Private Career Education, or post-secondary school accredited by a nationally recognized accrediting agency approved by the U.S. Department of Education wherever situated. All post-license education hours shall be conducted by actual classroom attendance.

(e) The Arkansas Real Estate Commission will establish the course content for the post-license education courses for new salespersons and brokers.

(f) The broker or salesperson shall deliver to the Commission the original certificate of completion of the post-license education course, or a copy thereof, from an approved provider, or other documentation satisfactory to the Commission. Said documentation must be received by the Commission no later than the end of the month one (1) year following the date of the broker's or salesperson's initial license. If documentation of an individual's post-license education is not received by the Commission within said time period, the license will be placed on inactive status until the broker or salesperson files satisfactory documentation of his completion of said post-license education course.

(g) A broker who is initially licensed in that capacity after January 1, 2002 cannot become an executive broker or principal broker until such broker has completed and filed satisfactory documentation of his completion of the post-license broker education course.

## **SECTION 12. INTEREST ON TRUST ACCOUNTS.**

### **12.1 Interest on trust account program.**

The Interest on Real Estate Brokers' Trust Account Program authorized by Section 24 of Act 690 of 1993 [A.C.A. §17-42-601 et seq.] is hereby established and Arkansas Real Estate Foundation, Inc. is designated as the recipient of funds generated by such program.

### **12.2 Certain interest bearing trust accounts approved.**

Notwithstanding any other Commission regulation to the contrary, a principal broker is authorized to maintain interest bearing trust accounts when required to do so by law or valid regulation of any governmental agency, or while participating in the Interest on Real Estate Brokers' Trust Account Program.

## **SECTION 13. TIME-SHARE.**

### **13.1 Registration; renewal.**

Each application for a time-share program shall be made on a form furnished by the Arkansas Real Estate Commission and shall be accompanied by a filing fee of three hundred dollars (\$300) plus five dollars (\$5) for each twenty-five (25) time-share intervals or portions thereof, provided however, the filing fee shall not exceed the sum of five hundred dollars (\$500).

Each registration shall be renewed annually pursuant to Ark. Code Ann. §§ 18-14-204(e) and 18-14-206(b) and shall be filed no later than July 1. Such renewal shall be made on a form prescribed by the Commission and accompanied by a fee of one-half (1/2) the amount of the original filing fee.

### **13.2 Agents; amendment of registration.**

(a) Each developer shall file with the Commission the name, street address, mailing address, and telephone number of each acquisition agent, managing agent, sales agent and exchange agent and the responsible managing employee for each of said agents associated with each time-share program. Should any of the information contained in this list change, then the developer shall notify the Commission of such change within two (2) weeks of such change.

(b) A developer shall amend or supplement its registration to report any material change in the information required by Ark. Code Ann. § 18-14-204. Such amendment or supplementation shall be made within forty-five (45) days of the occurrence of the material change. "Material change" means any change which alters the meaning or effect of an instrument or information, or any change which affects the rights or liabilities of any time-share owner or any potential time-share purchaser.

### **13.3 Fictitious name.**

Each developer, acquisition agent, managing agent, sales agent and exchange agent shall register with the Commission each fictitious name, if any, under which that person conducts business. No person shall conduct business which is regulated by the provisions of the Arkansas Time-Share Law under any names other than those registered with the Commission.

### **13.4 Purchase contract; cancellation notice; form, time, procedure.**

(a) A purchaser may cancel any contract for the purchase of a time-share interval from a developer within five (5) days after execution of the contract. The purchaser's right to cancel a contract for purchase shall not be waived.

(b) The public offering statement shall be written in clear, plain and concise language. There shall be attached to the front of the public offering statement a notice in duplicate containing the following language in at least 10 point boldface type:

**"IMPORTANT NOTICE**

**I UNDERSTAND THAT IF I SIGN A CONTRACT FOR THE PURCHASE OF A TIME-SHARE INTERVAL I HAVE THE RIGHT TO CANCEL THE CONTRACT WITHIN FIVE (5) DAYS AFTER SIGNING THE CONTRACT. I UNDERSTAND THAT CANCELLATION IS WITHOUT PENALTY AND ALL PAYMENTS MADE BY ME BEFORE CANCELLATION SHOULD BE REFUNDED WITHIN THIRTY (30) DAYS OF RECEIPT OF THE NOTICE OF CANCELLATION. IF THE FIFTH DAY AFTER THE SIGNING OF THIS CONTRACT IS A SATURDAY, SUNDAY, OR LEGAL HOLIDAY MY RIGHT TO CANCEL IS EXTENDED TO THE NEXT DAY WHICH IS NOT A SATURDAY, SUNDAY, OR LEGAL HOLIDAY.**

**I REALIZE THAT TO CANCEL THIS CONTRACT I MUST MAIL OR DELIVER A WRITTEN NOTICE OF CANCELLATION TO (NAME OF DEVELOPER) AT (DEVELOPER'S ADDRESS).**

**I UNDERSTAND THAT THE ARKANSAS REAL ESTATE COMMISSION NEITHER RECOMMENDS NOR APPROVES THIS OR ANY OTHER TIMESHARE PROGRAM.**

**I HEREBY ACKNOWLEDGE RECEIPT OF THE ATTACHED PUBLIC OFFERING STATEMENT.**

**(Purchaser's Signature)**

**DATE: \_\_\_\_\_"**

The original executed notice shall be retained by the developer and the duplicate copy shall be given to the purchaser. This notice shall contain no other printing or writing thereon.

(c) There shall be included in each contract for the purchase of a time-share interval immediately above the signature line a notice containing the following language in print size larger than the other provisions of the contract (excluding descriptive headings and titles) but no less than 10 point boldface type:

**"NOTICE TO PURCHASER**

**YOU HAVE THE RIGHT TO CANCEL THIS CONTRACT WITHIN FIVE (5) DAYS AFTER YOU SIGN THE CONTRACT. FOR FURTHER INFORMATION, SEE "IMPORTANT NOTICE" ATTACHED TO THE PUBLIC OFFERING STATEMENT."**

(d) Should the fifth day after the execution of the contract for purchase of a time-share interval be a Saturday, Sunday or legal holiday, then the five (5) day cancellation period shall not expire until the end of the next day which is not a Saturday, Sunday or legal holiday. "Legal holiday" means any day designated as a holiday by the President or the Congress of the United States or designated by the laws of this state.

Notice of cancellation shall be properly addressed with sufficient postage prepaid to assure delivery and notice shall be deemed given when postmarked by the United States Postal Service.

**13.5 Record maintenance.**

Each developer shall assure that any records required to be maintained pursuant to the Arkansas Time-Share Law or regulations promulgated thereunder shall be maintained and made available to the Arkansas Real Estate Commission upon request.

### **13.6 Records; developer and agent; type, time.**

(a) Each developer shall maintain complete records of each sale of any time-share intervals in the time-share project. The records shall be maintained for three (3) years and shall contain complete and detailed records of all escrow accounts required by statute or otherwise maintained; complete records of each sale of any time-share intervals, including copies of sales contracts, closing statements, credit disclosure information, executed copies of "Important Notice;" and any other information necessary to make a complete record of each transaction effected by the developer. These records shall be open to inspection by the Arkansas Real Estate Commission.

(b) Each sales agent functioning as a supervising broker pursuant to the Real Estate License Law shall maintain complete records of each transaction conducted by his/her firm. Each firm shall maintain signed copies of all offers, signed copies of all closing statements, detailed records of all escrow accounts required by statute or otherwise maintained, and any additional documents as may be necessary to make a complete record of each transaction effected by such firm. All such records shall be maintained for three (3) years and shall be open to inspection by the Arkansas Real Estate Commission.

(c) Each acquisition agent shall maintain complete records of all advertising and/or promotional materials used, names and addresses of all persons who receive prizes, other than the names and addresses of persons who received the prize most frequently awarded, the retail value of all prizes awarded and a statement of the odds of winning each prize. These records shall be maintained for three (3) years following the expiration date of the contest or gift offer and shall be open to inspection by the Arkansas Real Estate Commission.

(d) Each managing agent shall maintain complete records of all time-share programs managed by his/her firm. Each firm shall maintain complete and detailed records of all maintenance fees collected and the disbursement of these fees for repair and maintenance of the units. These records shall include copies of all contracts, agreements, receipts and invoices, and any additional documents as may be necessary to make a complete record of all financial transactions with regard to the management of each unit. Each firm shall also maintain complete records of any rental program operated for the benefit of interval owners. These records shall be maintained for three (3) years and shall be open to inspection by the Arkansas Real Estate Commission.

### **13.7 Advertising materials; filing, time.**

Advertising materials required to be submitted to the Commission under Ark. Code Ann. § 18-14-501 shall not be used in this state until either ten (10) days after such material has been received by the Commission or such earlier date as the Commission may determine in writing. Each separate filing of advertising materials shall be accompanied by a filing fee of ten dollars (\$10.00).

### **13.8 Financial statements.**

Financial statements required to be submitted to the Commission under Ark. Code Ann. § 18-14-204(a) shall be certified by a certified public accountant or a registered public accountant who shall state that in his/her opinion the financial statement presents fairly the financial position of the entity for which the certification is rendered. The accountant shall state that he/she has examined the entity's financial statement, that the examination was made in accordance with generally accepted auditing standards, and that the financial statement presents fairly the financial position of the entity in conformity with generally accepted accounting principles.

### **13.9 Promotional programs; prizes, odds.**

(a) At least ten (10) days prior to the initiation of any promotion, contest, sweepstakes or other prize or gift offer (hereinafter referred to as "promotional program") regarding a time-share development registered in Arkansas, the developer or acquisition agent or other principal party shall submit to the Commission a full and complete description of the promotional program, including but not limited to the following information:

- (1) The duration of the promotional program;
- (2) A description of each prize or gift to be awarded including the retail value of each prize or gift to be awarded and the minimum number of each prize to be awarded;
- (3) A copy of all advertising material to be used;
- (4) A statement of each condition precedent to the receipt of any gift or prize;
- (5) The formula used in computing the odds of winning each prize or category of prizes, if such odds are less than one to one.

(b) No change shall be made in any of the information submitted pursuant to Regulation 13.9(a)(1-5) without prior written approval of the Arkansas Real Estate Commission. The Commission shall determine within ten (10) days of receipt of the proposed change whether such change would constitute a material alteration to the promotional program and therefore constitute a new promotional program. "Material alteration" is any change in the odds of winning any prize or category of prizes; or any substantial change in the nature of the promotional program, value of prizes or gifts, length of the promotional program, or any other right or obligation of the participants in the promotional program. Should a proposed change constitute a new promotional program, the developer or acquisition agent or other principal party shall submit to the Commission a full and complete description of the promotional program under Regulation 13.9(a).

(c) Any representation of the odds of winning a prize or gift shall be stated in a straightforward and easily comprehensible manner in whole numbers without the use of decimal points or percentage signs.

- (d) All materials which advertise a promotional program shall prominently contain:
- (1) A disclosure of the odds of winning, if such odds are less than one to one;
  - (2) A disclosure that a "time-share" sales presentation will be offered or required;
  - (3) A disclosure of the qualifications necessary for participation in the promotional program;
  - (4) The description and retail value of the prize or gift; and
  - (5) If the promotional program involves the participation of other entities or developers, the disclosure that the promotional program has multiple sponsors and is either national, regional or statewide in scope, whichever is applicable.

(e) Within one (1) month of the conclusion of any prize offer in which the odds of receiving the prize are less than 1 to 1, the developer shall certify to the Commission the total number of offers made and the total number of winning numbers distributed by prize category.

(f) Within one (1) month of the conclusion of any contest, the developer shall provide to the Commission a list of the names and addresses of each person who received each prize, other than the prize most frequently awarded. The list shall identify the prize received by each person. The developer shall provide a copy of this list of winners to any person upon request.

### **13.10 "Reasonable Time" defined.**

"Reasonable time" as used in Ark. Code Ann. § 18-14-409(a) shall be presumed to be thirty (30) days.

### **13.11 Limitations.**

Should the parties agree to reduce the period of limitation as stated in Ark. Code Ann. § 18-14-403, such agreement to reduce shall be a separate and distinct paragraph of the contract and shall be initialed by the parties as though the paragraph were an alteration of the original agreement.

### **13.12 Reservation; deposit refundable.**

Upon receipt of a deposit and acceptance of a reservation pursuant to Ark. Code Ann. § 18-14-202(a), the developer shall notify the purchaser in writing that the deposit is refundable at any time at the purchaser's option and that the acceptance of the deposit does not create a binding obligation.

### **13.13 General regulations apply.**

Rules and Regulations of the Arkansas Real Estate Commission 1.1 through 12.2 inclusive shall regulate the practice and procedure for the Commission for enforcement of the Arkansas Time-Share Law and are hereby adopted and incorporated by reference as though included herein word for word; provided that, for purposes of the Arkansas Time-Share Law Regulations, reference to the real estate license law or Commission regulations, and/or reference to licensees, shall be deemed to include the Arkansas Time-Share Law and Time-Share Regulations; and reference to licensees shall be deemed to include registrants under the Arkansas Time-Share Law.

### **13.14 "No Action" letter.**

Whenever the Commission determines on the basis of the facts presented that no affirmative action is necessary to protect the public interest or prospective purchasers, a letter stating that no action will be taken by the Commission may be issued. Any letter by the Commission that action shall not be taken shall not bind the Commission with regard to its future actions relating to such matters unless the Commission shall specifically set forth in writing its determination to be so bound and the extent and nature thereof. Any such no-action letter shall not affect any right which any purchaser may have under the Arkansas Time-Share Law.

### **13.15 Effective date.**

The effective date of the Time-Share Regulations adopted herein [13.1 - 13.4] shall be the first day of the fourth month following adoption. [Adopted 11-27-84; effective 3-1-85.]

## **SECTION 14. EFFECTIVE DATE; PARTIAL REPEALER.**



#### **14.1 Effective date.**

The foregoing regulations numbered 1.1 through 12.2 shall become effective on January 1, 1994.

#### **14.2 Partial repealer.**

Previously enacted and currently existing regulations of the Commission numbered 101 through 159 and 201 through 205 are deemed superseded by these regulations 1.1 through 12.2 and are therefore repealed as of January 1, 1994 as to any acts, conduct, transactions or other matters which occur on or after January 1, 1994; provided, however, that any acts, conduct, transactions or other matters which occur prior to January 1, 1994, which become the subject of a complaint, hearing, action, or determination after January 1, 1994, shall be governed and controlled by Regulations 101 through 159 and 201 through 205.

### **SECTION 15. REAL ESTATE AUCTION DEFINITIONS AND REQUIREMENTS.**

#### **15.1 Definitions.**

(a) Auction means a method of selling real estate in a public forum through open and competitive bidding.

(b) Auctioneer means any individual who holds an active Arkansas Real Estate license pursuant to ACA § 17-42-101 et seq. [and an active Arkansas Auctioneer license pursuant to ACA § 17-17-101 et seq.], who offers, attempts, or agrees to auction real estate or participate in a real estate auction.

(c) Buyer's premium means an advertised percentage of the high bid or flat fee added to the high bid to determine the total contract price to be paid by the buyer.

(d) Absolute Auction means an auction where the real estate is sold to the highest qualified bidder with no minimum bid or limiting conditions. The seller may not bid personally or through an agent, unless the seller is a party to the dissolution of any marriage, limited liability company, partnership, or corporation, and is bidding as an individual apart from the selling entity. Also known as an auction without reserve.

(e) Auction With Reserve means an auction of real estate in which the seller or his agent reserves the right to establish a disclosed or undisclosed minimum bid, to accept or reject any and all bids, and to withdraw the real estate at any time prior to the completion of the sale by the auctioneer. Also known as reserve auction.

#### **15.2 Nature of auction.**

(a) Auction shall be with reserve, unless the real estate is offered without reserve using explicit terms such as "absolute" or "without reserve." In an auction "with reserve," the auctioneer may withdraw the real estate at any time until he/she announces completion of the auction. In an "absolute" auction or auction "without reserve," after the auctioneer calls for bids on real estate, that real estate cannot be withdrawn unless no bid is made within a reasonable time.

(b) The auctioneer shall have a written agreement with the owner stating the parties' agreement regarding the terms and conditions of the auction, including whether the auction will be an absolute auction or auction with reserve and the terms of reserve or conditions on the sale; whether a buyer's premium will be charged the buyer and who will receive the buyer's premium collected, and whether the auctioneer or others on the auctioneer's behalf may bid on or purchase the subject real estate at the auction.

### **15.3 Auctioneer/Seller bidding or purchasing auctioned real estate.**

(a) Auctioneer bidding.

The auctioneer shall not bid or otherwise purchase the real estate being auctioned, or permit others to do so on his behalf, unless he has disclosed that he may bid or may purchase the real estate as provided herein.

(b) Seller bidding.

(1) In an absolute auction, the auctioneer shall not knowingly permit the seller or others on the seller's behalf to bid on the seller's real estate being auctioned, unless the seller is a party to the dissolution of any marriage, limited liability company, partnership, or corporation, and is bidding as an individual apart from the selling entity and disclosure as required herein has been made to those in attendance at the auction.

(2) In a reserve auction, the auctioneer shall not knowingly permit the seller or others on the seller's behalf to bid on the seller's real estate being auctioned unless the auctioneer has disclosed that the seller or others on the seller's behalf may bid on the real estate being auctioned as provided herein.

(c) Notices.

Immediately prior to opening the bidding on the subject real estate, the auctioneer shall announce to all of those in attendance at the auction, the terms and conditions of the auction, and announce if the seller and/or auctioneer, or others on their behalf may bid on or purchase the real estate being auctioned.

## **Federal Fair Housing Law**

# **Summary Information**

## **Extracted From**

### **Federal Register**

**Vol. 54, No. 13**

### **“Implementation of the Fair Housing Amendments Act of 1988”**

## **U.S. Department of Housing and Urban Development Publication**

### **“Fair Housing - It’s Your Right”**

**(HUD Publication: HUD-1260-FHEO)**

## **Federal Fair Housing Laws**

Federal laws that are commonly referred to as “fair housing laws” consist of the:

- Civil Rights Act of 1866
- Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended in 1974 and 1988)
- 14th Amendment to the United States Constitution

## **The Fair Housing Act**

The Fair Housing Act prohibits discrimination in housing because of:

- Race or color
- National origin
- Religion
- Sex
- Familial status (including children under the age of 18 living with parents or legal custodians; pregnant women and people securing custody of children under 18)
- Handicap

## **What Housing Is Covered?**

The Fair Housing Act covers most housing. In some circumstances, the Act exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members.

### **Discriminatory Housing Practices - What Is Prohibited?**

**In the Sale and Rental of Housing:** No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap:

- It shall be unlawful for a person to refuse to sell or rent a dwelling to a person who has made a bona fide offer, because of race, color, religion, sex, familial status, or national origin or to refuse to negotiate with a person for the sale or rental of a dwelling because of race, color, religion, sex, familial status, or national origin, or to discriminate against any person in the sale or rental of a dwelling because of handicap.

Prohibited actions include but are not limited to:

Failing to accept or consider a bona fide offer.

Refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with any person.

Imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person.

Using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis, or sale or rental approval procedures or other requirements.

Evicting tenants because of their race, color, religion, sex, handicap, familial status, or national origin or because of the race, color, religion, sex, handicap, familial status, or national origin of a tenant's guest.

- It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to impose different terms, conditions or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling.

Prohibited actions include but are not limited to:

Using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits and the terms of a lease and those relating to down payment and closing requirements.

Failing or delaying maintenance or repairs or sale or rental dwellings.

Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately.

Limiting the use of privileges, services or facilities associated with a dwelling.

Denying or limiting services or facilities in connection with the sale or rental of a dwelling.

- It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development.

Prohibited actions which are generally referred to as unlawful steering include but are not limited to:

Discouraging any person from inspecting, purchasing or renting a dwelling.

Discouraging the purchase or rental of a dwelling by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development.

Communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents of a community, neighborhood or development.

Assigning any person to a particular section of a community, neighborhood or development, or to a particular floor of a building.

- It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons.

Prohibited actions relating to dwellings include but are not limited to:

Discharging or taking other adverse action against an employee, broker or agent because he or she refused to participate in a discriminatory housing practice.

Employing codes or other devices to segregate or reject applicants, purchasers or renters, refusing to take or to show listings of dwellings in certain areas because of race, color, religion, sex, handicap, familial status, or national origin, or refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular race, color, religion, sex, handicap, familial status, or national origin.

Denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling.

Refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently.

- It shall be unlawful to make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling which indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation or discrimination.

Discriminatory notices, statements and advertisements include, but are not limited to:

Using words, phrases, photographs, illustrations, symbols or forms which convey that dwellings are available or not available to a particular group of persons.

Expressing to agents, brokers, employees, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter.

Selecting media or locations for advertising the sale or rental of dwellings which deny particular segments of the housing market information about housing opportunities.

Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising.

- It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to provide inaccurate or untrue information about the availability of dwellings for sale or rental.

Prohibited actions include but are not limited to:

Indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented.

Representing that covenants or other deed, trust or lease provisions which purport to restrict the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, or national origin preclude the sale or rental of a dwelling to a person.

Enforcing covenants or other deed, trust, or lease provisions which preclude the sale or rental of a dwelling to any person.

Limiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale or rental.

Providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, including testers, regardless of whether such person is actually seeking housing.

- **Blockbusting:** It shall be unlawful, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin or with a handicap.

Prohibited actions include but are not limited to:

Engaging, for profit, in conduct (including uninvited solicitations for listings) which conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, religion, sex, handicap, familial status, or national origin of persons residing in it, in order to encourage the person to offer a dwelling for sale or rental.

Encouraging, for profit, any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons of a particular race, color, religion, sex, familial status, or national origin, or with handicaps, can or will result in undesirable consequences for the project, neighborhood or community, such as a lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities.

- It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership or participation, because of race, color, religion, sex, handicap, familial status, or national origin.

Prohibited actions include but are not limited to:

Setting different fees for access to or membership in a multiple listing service.

Denying or limiting benefits accruing to members in a real estate brokers' organization.

Imposing different standards or criteria for membership in a real estate sales or rental organization.

Establishing geographic boundaries or office location or residence requirements for access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings.

**In Mortgage Lending:** No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap:

- Refuse to make a mortgage loan
- Refuse to provide information regarding loans
- Impose different terms or conditions on a loan
- Discriminate in appraising property
- Refuse to purchase a loan or
- Set different terms or conditions for purchasing a loan

**In Addition:** It is illegal for anyone to:

- Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right
- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status or handicap. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

### **Additional Protection If A Person Has A Disability**

If a person or someone associated with that person:

Has a physical or mental disability (including hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex and mental retardation) that substantially limits one or more major life activities

Has a record of such a disability or

Is regarded as having such a disability

- The landlord may not:

Refuse to let that person make reasonable modifications to the dwelling or common use areas, at that person's expense, if necessary for the handicapped person to use the housing. (Where reasonable, the landlord may permit changes only if the person agrees to restore the property to its original condition when he moves.)

Refuse to make reasonable accommodations in rules, policies, practices or services if necessary for the handicapped person to use the housing.

**Example:** A building with a "no pets" policy must allow a visually impaired tenant to keep a guide dog.

**Example:** An apartment complex that offers tenants ample, unassigned parking must honor a request from a mobility-impaired tenant for a reserved space near her apartment if necessary to assure that she can have access to her apartment.

However, housing need not be made available to a person who is a direct threat to the health or safety of others or who currently uses illegal drugs.

**Requirements for New Buildings:** In buildings that are ready for first occupancy after March 13, 1991, and have an elevator and four or more units:

- Public and common areas must be accessible to persons with disabilities
- Doors and hallways must be wide enough for wheelchairs
- All units must have:
  - An accessible route into and through the unit
  - Accessible light switches, electrical outlets, thermostats and other environmental controls
  - Reinforced bathroom walls to allow later installation of grab bars and
  - Kitchens and bathrooms that can be used by people in wheelchairs

If a building with four or more units has no elevator and will be ready for first occupancy after March 13, 1991, these standards apply to ground floor units.

These requirements for new buildings do not replace any more stringent standards in state or local law.

### **Housing Opportunities for Families**

Unless a building or community qualifies as housing for older persons, it may not discriminate based on familial status. That is, it may not discriminate against families in which one or more children under 18 live with:

- A parent
- A person who has legal custody of the child or children or
- The designee of the parent or legal custodian, with the parent or custodian's written permission



Familial status protection also applies to pregnant women and anyone securing legal custody of a child under 18.

**Exemption:** Housing for older persons is exempt from the prohibition against familial status discrimination if:

- The HUD Secretary has determined that it is specifically designed for and occupied by elderly persons under a federal, state or local government program or
- It is occupied solely by persons who are 62 or older or
- It houses at least one person who is 55 or older in at least 80 percent of the occupied units and adheres to a published policy statement that demonstrates an intent to house persons who are 55 or older.

A transition period permits residents on or before September 13, 1988 to continue living in the housing, regardless of their age, without interfering with the exemption.

**For Further Information:**

The purpose of this information is to summarize certain fair housing laws. The Fair Housing Act and HUD's regulations contain more detail and technical information. If you need a copy of the law or regulations, contact the HUD regional office nearest you or:

Office of Fair Housing and Equal Opportunity, Room 5116  
Department of Housing and Urban Development  
451 Seventh Street, S.W., Washington, D.C. 20410-2000  
(202) 708-2878